844.

SUPREME COURT OF THE UNITED STATES.

No. 83.

NATHANIEL CRANE, PLAINTIFF IN ERROR,

VERSUS

LESSEE OF HENRY GAGE MORRIS, ET AL., AND OF JOHN JACOB ASTOR, ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error,	1	2
Argument of counsel,	3	2
Citation,	5	3
Declaration in ejectment,	7	4
General issue,	19	10
Verdict and judgment,	21	10
Bill of exceptions,	23	11
Testimony of Beverly Robinson, witness of plaintiff,	35	18
" Josiah Ogden Hoffman, " "	39	20
" Beverly Robinson, " "	40	20
" Joseph Crane, " "	42	21
Defendants objections and evidence,	43	22
Testimony of Truman Smith, defendant's witness,	51	26
" John Watts, " "	52	27
" Thomas Barclay, plaintiff's witness,	54	28
" Nicholas Fish, " "	54	28
Points submitted by plaintiff's counsel to the court,	54	28
" " defendant's " "	55	28
Opinion of the court on the points submitted by defendant, &c.,	57	29
" " " " plaintiff, &c.,	59	30
Schedule A.—Patent from William the third to Adolph Philipse, bearing date 17th June, 1697, (referred to in ante. pa. 35;)	61	31
Schedule B.—Deed of 7th February, 1754, between Philip Philipse and Beverly Robinson, and ux, and Mary Philipse, (referred to ante. 38,)	63	32

Schedule C.—Deed of 13th January, 1758, between Mary Philipse of the 1st part, Roger Morris of the 2d part, and Johannah Philipse of the third part, (referred to ante. 38,).....65.....33
Schedule D.—Abstract of release of 19th December, 1809, (referred to ante. 41,) 70.....36
" F —Patent of 27th March, 1761, to Beverly Robinson, Roger Morris, and Philip Philipse, (referred to ante 48,).....79.....40
Schedule G.—Deed of 18th January, 1758, between Beverly Robinson, et al., and Henry Beekman, et al., (referred to ante. 47,).....91.....45
Schedule H.—Deed of 18th February, 1771, between Beverly Robinson et al., and Samuel Verplanck, (referred to ante. 47,).....93.....46
Clerk's certificate,.....97.....49

The President of the United States of America, to the honorable Smith Thompson, associate justice of the Supreme Court of the United States, residing in the second circuit.

Because in the record and proceedings, and also in the giving of judgment, in a plaint which was in the circuit court for the southern district of New York, in the second circuit, and in which the matter in dispute exceeds the sum of two thousand dollars, exclusive of costs, before you and the district judge of the said district, without our writ, between James Jackson, a citizen of the State of New Jersey, on the demise of Henry Gage Morris, Maria Morris, Thomas Hincks, and John Hincks, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, and on the demise of John Jacob Astor, Theodosius Fowler, Cadwallader D. Colden, and Cornelius J. Bogert, citizens of the State of New Jersey, plaintiff, and Nathaniel Crane, a citizen of the State of New York, defendant, of a plea of tresspass and ejectment, manifest error hath intervened, to the great damage of the said Nathaniel Crane, as by his complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send to us, distinctly and openly, under your seal, the record and proceedings of the plaint aforesaid, with all things concerning the same, and this writ, so that the same may be before the chief justice and associate justices of the United States, in the Supreme Court of the United States, at the city of Washington, on the first Monday of August next, that the record and proceedings aforesaid, being inspected, there may be further done thereupon, for correcting that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable John Marshall, Chief Justice of the United States, at the city of Washington, on the fourth Monday of February, in the fifty-fifth year of our independence, and in the year of our Lord one thousand eight hundred and thirty-one.

FRED. J. BETTS, *Clk.*

GREENE C. BRONSON,
Att'y for plaintiff in error.

Allowed, May 17th, 1831.
SMITH THOMPSON.

845.

Circuit court of the United States for the southern district of New York, in the second circuit.

JAMES JACKSON, on the demise of John J. Astor, and others, *vs.* NATHANIEL CRANE.

THE SAME *vs.* SAMUEL KELLY.

It is hereby consented to, on part of the plaintiff in each of the above suits, that a citation may be issued upon the writs of error, to be brought in each of these suits, without taking any security for prosecuting such writ of error to effect. Dated May 17, 1831.

Z. PLATT,
Att'y for plaintiff.
DAN. LORD, JR.,
Counsel for plaintiff.

To James Jackson, a citizen of the State of New Jersey:

Whereas a writ of error hath been issued to the circuit court of the United States for the southern district of New York, in the second circuit, returnable in the Supreme Court of the United States, at the city of Washington, on the first Monday of August next, for the correcting of the errors alleged in the proceedings and judgment in the said circuit court, in a certain plea of trespass and ejectment, between you, the said James Jackson, on the demise of John Jacob Astor and others, plaintiff, and Nathaniel Crane, defendant.

Now you are hereby cited to appear in the said Supreme Court, on the aforesaid day, for the return of the said writ of error, then and there to be heard as to the matters which, on behalf of the said Nathaniel Crane, shall then and there be alleged for error in the judgment and proceedings aforesaid.

Given under my hand, at the city of New York, this seventeenth day of May, in the fifty-fifth year of our independence, and in the year of our Lord eighteen hundred and thirty-one.

SMITH THOMPSON.

Due service of this citation is hereby admitted. May 17, 1831.
DAN. LORD, JR.,
Att'y of defendant in error.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT.

Pleas at the City Hall in the City of New York, before the honorable the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, of the term of May, one thousand eight hundred and twenty-eight.

SOUTHERN DISTRICT OF NEW YORK, ss:

James Jackson, a citizen of the State of New Jersey, puts in his place Zephaniah Platt, his attorney, against Nathaniel Crane, a citizen of the State of New York, in a plea of trespass and ejectment of farm.

SOUTHERN DISTRICT OF NEW YORK, ss:

Nathaniel Crane, a citizen of the State of New York, puts in his place Samuel A. Talcott, his attorney, at the suit of James Jackson, a citizen of the State of New Jersey, in the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, ss:

Be it remembered, that, on the the last Monday of May, in this same term, James Jackson came before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, by Zephaniah Platt, his attorney, and brings herein to the said court his bill against Nathaniel Crane, in custody, &c. of a plea of trespass and ejectment of farm, and there are pledges for the prosecution, to wit, J hn Doe, and Richard Roe; which said bill follows in the words:

SOUTHERN DISTRICT OF NEW YORK, ss:

James Jackson, a citizen of the State of New Jersey, complains of Nathaniel Crane, a citizen of the State of New York, being in custody, &c., for that whereas, heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Henry Gage Morris, and Maria Morris, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said Samuel Jackson, two messuages, two barns, two orchards, two hundred acres of arable land, two hundred acres of wood land, two hundred acres of meadow land, two hundred acres of pasture land, and two hundred acres of land covered with water, with the appurtenances, situate, lying, and being in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, and which said tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said tenements, with the appurtenances, unto the said James Jackson and his assigns, from the first day of January, in the year aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said James Jackson, into the messuages and tenements aforesaid, with the appurtenances, did enter, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year aforesaid, with force and arms, &c., in and upon the possession of the said James Jackson did enter, and him, the said James Jackson, his term therein being not yet ended, did eject, expel, and amove therefrom, and hath held out and doth hold out him, the said James Jackson, and other wrongs to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretotore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Maria Morris, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the first day of January, in the year aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said last mentioned tenements, with the appurte-

846.

nances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., in and upon the possession of the said James Jackson did enter, and did expel, eject, and amove him from his said possession, his said term therein being not yet ended, and hath kept and doth still keep him so expelled, ejected, and amoved from his said possession, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Henry Gage Morris, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situated in the town of Carmel, in the county of Putman, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said last mentioned tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, aft rwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., in and upon the possession of the said James Jackson did enter, and did expel, eject, and amove him therefrom, his said time therein being not yet ended, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Thomas Hincks, and John Hincks, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, did, demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and

ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Thomas Hincks, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messauges, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, John Hincks, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putman, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one

847.

thousand eight hundred and twenty-six, Henry Gage Morris, Maria Morris, Thomas Hincks, and John Hincks, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, John Jacob Astor, a citizen of the State of New Jersey, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered in and upon the possession of the said James Jackson, and ejected, amoved, and expelled him therefrom, his said term therein being not yet ended, and hath kept out and doth still keep him so ejected, amoved, and expelled therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Theodosius Fowler, a citizen of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other

two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned. with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messsuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Cadwallader D. Colden, a citizen of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson, entered in and upon the said messuages and tenements, with the appurtenances, and was possessed thereof, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Cornelius J. Bogart, a citizen of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam,

848.

and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messuages and tenements, with the appurtenances, and was possessed thereof, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty six, John Jacob Astor, Theodosius Fowler, Cadwallader D. Colden, and Cornelius J. Bogart, citizens of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

By means of which said premises, the said James Jackson says he is injured, and has sustained damage to two thousand five hundred dollars, and therefore he brings suit, &c.

And at this day, to wit, the last Monday in October, in this same term, (to which day the said defendant had leave to imparl and then to answer,) before the Judges aforesaid, at the City Hall in New York aforesaid, comes as well the said plaintiff, by his attorney. And the said Nathaniel Crane, defends the force and injury when, &c., and says he is in no wise guilty of the trespass and ejectment aforesaid, as the said James Jackson above complains against him, and thereof he puts himself upon the country; and the said James Jackson doth the like, &c.

Therefore, to try the issue above joined, let there come a jury thereof, before the Judges aforesaid, at the City Hall, in the City of New York, on the last Monday of May next, by whom, &c., and who neither, &c., because as well, &c., to recognize, &c., be the same day is given to the parties here, &c., at which day, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, came the parties aforesaid, by their attorneys, and the marshal did not send the writ to him in that behalf directed, nor did he do any thing thereupon; therefore, as before, let a jury thereupon come before the Judges aforesaid, at the City Hall, in the City of New York, on the last Monday of October next, by whom, &c., and who neither, &c., to recognize, &c.; because as well, &c.; the same day is given to the parties here, &c.; at which day, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, came the parties aforesaid, by their attorneys aforesaid, and the marshal did not send the writ to him in that behalf directed, nor did he do any thing thereupon.

Therefore, as before, let a jury thereupon come, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, on the last Monday in May next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the parties here, &c.; at which day, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, came the parties aforesaid, by their attorneys aforesaid, and the marshal did not send the writ to him in that behalf directed, nor did he do any thing thereupon.

And since the last continuance, it was ordered by the said court, by the consent of parties, that Greene C. Bronson be substituted an attorney for the defendant, instead of Samuel A. Talcott, the former attorney.

Therefore, as before, let a Jury thereupon come, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, on the last Monday in October next, by whom, &c., and who neither, &c., to recognize, &c., because as as well, &c.; the same day is given to the parties here, &c., at which day, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, came the parties aforesaid, by their attorneys aforesaid, and the martial did not send the writ to them in that behalf directed, nor did he do any thing thereupon.

Therefore, as before, let a jury thereupon come, before the Judges aforesaid, at the City Hall, in the City of New York aforesaid, on the last Monday in May next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the parties here, &c.

And afterwards, that is to say, on the day, and at the place within contained,before the Judges of the circuit court of the United States for the southern district of New York, in the second circuit, came as well the said James Jackson as the said Nathaniel Crane, by their respective attorneys within mentioned. And the jurors of the jury, whereof mention is within made, being summoned, also came, who to speak the truth of the matters within contained, being chosen, tried, and sworn, say, upon their oath, that the said Nathaniel Crane is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said James Jackson hath within complained against him, and they assess the damages of the said James Jackson, by reason of the premises, over and above his costs and charges by him about his suit in this behalf expended, to six cents, and for those costs and charges six cents.

Therefore it is considered that the said James Jackson do recover against

849.

the said Nathaniel Crane his said term yet to come of and in the tenements aforesaid, with the appurtenances, and his said damages to six cents, by the jurors aforesaid, in form aforesaid, assessed, and also seven hundred and sixty dollars and eighty-five cents, for his said costs and charges, by the court now here adjudged, of increase to the said James Jackson, and with his assent, which said damages, costs, and charges, in the whole, amount to seven hundred and sixty dollars and ninety-seven cents.

And let the said James Jackson have execution therefor.

And hereupon, the said James Jackson prays the writ of the President of the United States of America, issuing out of this honorable court, to be directed to the marshal of the southern district of New York, in the second circuit, to cause him to have the possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances, and it is granted to him, &c.

Judgment signed this 3d day of December, 1830.

FRED. J. BETTS, *Clerk.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

NATHANIEL CRANE, *ads.* JAMES JACKSON, *ex dem.* JOHN JACOB ASTOR, and others. } *Bill of Exceptions.*

STATE OF NEW YORK, ss:

Be it remembered, that, in the term of October, in the year of our Lord, eighteen hundred and twenty-six, came James Jackson, by Zephaniah Platt, his attorney, into the circuit court of the United States for the southern district of the State of New York, in the second circuit, before the honorable Smith Thompson, one of the Justices of the Supreme Court of the United States, and the honorable Samuel R. Betts, Judge of the district court of the United States for the southern district of the State of New York, and impleaded Nathaniel Crane in a certain plea of tresspass and ejectment, on which the said James Jackson declared against the said Nathaniel Crane as follows, that is to say:

SOUTHERN DISTRICT OF NEW YORK, ss:

James Jackson, a citizen of the State of New Jersey, complains of Nathaniel Crane, a citizen of the State of New York, being in custody, &c. For that whereas, heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Henry Gage Morris, and Maria Morris, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two messuages, two barns, two orchards, two hundred acres of arable land, two hundred acres of wood land, two hundred acres of meadow land, two hundred acres of pasture land, and two hundred acres of land covered with water, with the appurtenances, situate, lying and being in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, and which said tenements with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said tenements, with the appurtenances, unto the said James Jackson and his

assigns, from the first day of January, in the year aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said James Jackson, into the messuages and tenements aforesaid, with the appurtenances, did enter and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year aforesaid, with force and arms, &c., in and upon the possession of the said Jackson did enter, and him the said James Jackson, his term therein being not yet ended, did eject, expel, and amove therefrom, and hath held out and doth hold out him, the said James Jackson, and other wrongs to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Maria Moris, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the first day of January, in the year aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said last mentioned tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., in and upon the possession of the said James Jackson did enter, and did expel, eject, and amove him from his said possession, his said term therein being not yet ended, and hath kept and doth still keep him so expelled, ejected, and amoved from his said possession, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Henry Gage Morris, an alien and subject of the King of the United Kingdom of Great Britain and and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, other two hundred acres of land covered with water, with the appurtenances, situated in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of the said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson, and his assigns, from the first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully

857.

to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said last mentioned tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., in and upon the possession of the said James Jackson did enter, and did expel, eject, and amove him therefrom, his said term therein being not yet ended, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Thomas Hincks and John Hincks, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages, and tenemeuts, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Thomas Hincks, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson, entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the

second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, John Hincks, an alien and subject of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to form let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Henry Gage Morris and Maria Morris, Thomas Hincks and John Hincks, aliens and subjects of the King of the United Kingdom of Great Britain and Ireland, did demise, set, and to farm let, unto to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until afterwards, to wit, on the second day of January, in the year aforesaid, the said Nathaniel Crane, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath

857.

kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, John Jacob Astor, a citizen of the State of New Jersey, did demise, set, and to farm let, unto the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson, entered into the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered in and upon the possession of the said James Jackson, and ejected, amoved, and expelled him therefrom, his said term therein being not yet ended, and hath kept and doth still keep him so ejected, amoved, and expelled therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Theodosius Fowler, a citizen of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, and county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one

thousand eight hundred and twenty-six, Cadwallader D. Colden, a citizen of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, Cornelius J. Bogart, a citizen of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hundred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, and other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected, expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

And whereas, also heretofore, to wit, on the first day of January, one thousand eight hundred and twenty-six, John Jacob Astor, Theodosius Fowler, Cadwallader D. Colden, and Cornelius J. Bogart, citizens of the State of New Jersey, did demise, set, and to farm let, to the said James Jackson, two other messuages, two other barns, two other orchards, other two hun-

852.

dred acres of arable land, other two hundred acres of wood land, other two hundred acres of meadow land, other two hundred acres of pasture land, other two hundred acres of land covered with water, with the appurtenances, situate in the town of Carmel, in the county of Putnam, and State of New York, and in the southern district of said State, which said last mentioned tenements, with the appurtenances, are of the value of more than two thousand dollars. To have and to hold the said last mentioned tenements, with the appurtenances, unto the said James Jackson and his assigns, from the said first day of January, in the year last aforesaid, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which said last mentioned demise, the said James Jackson entered in and upon the said messuages and tenements, with the appurtenances, and was thereof possessed, until the said Nathaniel Crane, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered upon the possession of the said James Jackson, his said term therein being not yet ended, and ejected, expelled, and amoved him therefrom, and hath kept and doth still keep him so ejected; expelled, and amoved therefrom, and other injuries to him then and there did, against the peace of the people, and to the great damage of the said James Jackson.

By means of which said premises, the said James Jackson says he is injured, and has sustained damage to two thousand and five hundred dollars, and therefore he brings suit, &c.

And now at this day, to wit, the last Monday in October, in this same term, (to which day the said defendant had leave to imparl and then to answer,) before the judges aforesaid, at the City Hall in New York aforesaid, comes as well the said plaintiff, by his attorney, as the said defendant by his attorney. And the said Nathaniel Crane defends the force and injury, when &c., and says, he is in no wise guilty of the tresspass and ejectment aforesaid, as the said James Jackson above complains against him, and thereof he puts himself upon the country; and the said James Jackson doth the like, &c.

And thereupon issue was joined between the said parties. And afterwards, to wit, at a circuit court, held at the City Hall of the City of New York, in and for the southern district of New York, in the said second circuit, on the third day of June, in the year of our Lord one thousand eight hundred and thirty, and continued until the eighth day of the same month, before the honorable Smith Thompson, one of the Justices of the Supreme Court of the United States, appointed to hold the said court, and the honorable Samuel R. Betts, Judge of the district court of the United States for the southern district of New York, the aforesaid issue so joined between the parties aforesaid, came on to be tried by a jury of the *city* and *county* of New York, in the said second circuit, for that purpose empannelled, that is to say, James Avery, grocer, William Burns, merchant, Thomas Carpenter, grocer, Jeremiah Haley, grocer, Andrew D. Hall, clothier, Caleb Haveland, merchant, Beach Ivers, founder, Charles Mathews, merchant, William McCluskey, grocer, John McNulty, merchant, J. C. Merritt, merchant, Harvey Vail, merchant, and Thadeus B. Wakeman, merchant, good and lawful men of the said city and county of New York, at which day came there as well the said James Jackson, by his attorney aforesaid, as the said Nathaniel Crane, by Greene C. Bronson, his attorney, duly substituted in the place of Samuel A. Talcott; and the jurors aforesaid, empannelled to try the said issue, being called, also came, and were then and there duly sworn to try the same issue.

And upon the trial of that issue, the said Nathaniel Crane confessed lease, entry, and ouster, pursuant to the consent rule.

And thereupon, on the said trial, the counsel, learned in the law, for the said plaintiff, to maintain and prove the said issue, on his part, gave in evidence a patent from William the Third to Adolph Philipse, bearing date the seventeenth day of June, in the year of our Lord sixteen hundred and ninety-seven, for a large tract of land, including the premises in question in this suit, a true copy of which said patent is contained in schedule hereunto annexed, marked A.

Beverly Robinson, a witness sworn on the part of the plaintiff, testified that he was of the family of the patentee, Adolph Philipse; that, according to general reputation in the family, the said Adolph Philipse died many years since, probably one hundred years, leaving Frederick Philipse, his great nephew, his heir at law, who thereupon, as such heir, became seized in fee of all the lands granted by the said patent; and that the said Frederick Philipse is reputed to have died seventy or eighty years since.

The plaintiff also gave in evidence certain proceedings in the court of chancery, of the then colony of New York, for proving the last will and testament of the said Frederick Philipse, by which it appeared that the said Frederick Philipse died in the month of July, in the year of our Lord seventeen hundred and fifty-one, having first, and on the sixth day of June, in that year, duly made and published his last will and testament, by which he devised all the lands mentioned in the said patent to his four children, namely, Philip Philipse, Susannah Philipse, Mary Philipse, and Margaret Philipse, one equal undivided fourth part to each, in fee tail, with a limitation over to the survivors, in fee tail, of the part or share of any one or more of the said children who might die without having had children capable of inheriting the said estate. By the said proceedings in chancery, it further appeared that Margaret, one of the said devisees, died shortly after the testator, without having been married; and it further appeared that the said Frederick Philipse left Johannah Philipse, his widow him surviving.

The plaintiff then gave in evidence a deed to lead the uses of a common recovery, to be suffered of the lands mentioned in the said patent, for the purpose of docking the said entail, which said conveyance was made by way of lease and release, the lease bearing date twenty-eighth, and the release the twenty-ninth day of June, in the year of our Lord seventeen hundred and fifty-three. And the said release was made and executed, by and between the said Philip Philipse of the first part, Beverly Robinson and Susannah his wife (being the same Susannah before mentioned) of the second part, the said Mary Philipse of the third, William Alexander of the fourth part, and Thomas Jones of the fifth part. And the uses of the said lands were thereby limited and declared to be to the said Philip Philipse one third part in fee simple, to the said Susannah Robinson, one third part in fee simple, and to the said Mary Philipse, one third part in fee simple, as tenants in common, which said release, on the thirtieth day of July, and which said lease, on the first day of August, both in the year of our Lord seventeen hundred and fifty-three, were severally duly acknowledged before Joseph Murray, Esq., one of his Majesty's council for the province of New York, and were severally recorded in the office of the Secretary of the said colony.

The plaintiff also gave in evidence the record of a common recovery, suffered in the Supreme Court of the colony of New York, in the term of July, in the year of our Lord seventeen hundred and fifty-three, in pursu-

833.

ance of the said deeds, to lead the uses, in which action judgment was recovered and perfected, on the fourth day of August, in the year last aforesaid; and also the record of a writ of execution on the said recovery, with a return endorsed thereon that seizin had been delivered according to the judgment in the said common recovery.

The plaintiff also gave in evidence a deed, bearing date the seventh day of February, in the year of our Lord seventeen hundred and fifty-four, between the said Philip Philipse, and Beverly Robinson, and Susannah his wife, of the first part, and the said Mary Philipse of the second part, which deed recites, that the said Philip Philipse, Susannah Robinson, and Mary Philipse were seized in fee simple, in common of the said lands granted to Adolph Philipse: that the parties to the said deed had, by Jonathan Hampton, their surveyor, divided the greatest part of the said tract or parcel of land, and distinguished the same by lots, and that lots number three, five, and nine, and one-third of the meadow land lying in lot number two, did then belong to the lot and share of the said Mary Philipse, and by which said deed, the said parties of the first part, after reciting as aforesaid, for and in consideration of mutual grants and releases from the said Mary Philipse to them, the said Philip Philipse and Susannah Robinson, and to their respective heirs and assigns, of divers other lots and parcels of land in the tract granted to Adolph Philipse as aforesaid, and also in consideration of the sum of ten shillings, to them in hand paid, did grant, bargain, sell, alien, release, and confirm unto the said Mary Philipse, her heirs and assigns, all and singular the lots and parcels of land before mentioned, to belong to her, the said Mary Philipse; to have and to hold the same, with the appurtenances, &c., to the said Mary Philipse, her heirs and assigns, to the only proper use, benefit, and behoof of the said Mary Philipse, her heirs and assigns for ever; which said deed was, on the day of its date, duly acknowledged before Joseph Murray, Esquire, one of his Majesty's counsel for the province of New York, and was recorded in the office of the Secretary of the said colony.

The said lots are described in the said deed as containing, to wit, lot number three, about eight thousand six hundred acres, lot number five, containing about thirty-one thousand two hundred acres, and lot number nine, about eleven thousand two hundred and twenty acres; which said lots, number three, five and nine, and one-third of the meadow land in lot number two, are described in the said deed, as is set forth in a schedule hereunto annexed, marked B; which said deed, to lead the uses, and the said partition, severally recite the patent to Adolph Philipse, and a title under it in the heirs of the said Frederick Philipse.

The plaintiff then read in evidence, subject to all legal exceptions as to the proof given and to be given of the execution and delivery of the same, a deed written upon parchment, bearing date the thirteenth day of January, in the year of our Lord seventeen hundred and fifty eight, between Mary Philipse of the first part, Roger Morris of the second part, and Johannah Philipse and Beverly Robinson of the third part, a true copy whereof is contained in a schedule hereunto, marked C; upon the back of which said deed was a certificate endorsed in the following words, that is to say: "Be it remembered, that on the fifth day of April, in the year of our Lord one thousand seven hundred and eighty-seven, personally came and appeared before me, John Sloss Hobart, one of the Justices of the Supreme Court of the State of New York, William Livingston, Esquire, Governor of the State of

New Jersey, one of the subscribing witnesses to the within written indenture, who being by me duly sworn, did testify and declare, that he was present at or about the day of the date of the within indenture, and did see the within named Johannah Philipse, Beverly Robinson, Roger Morris, and Mary Philipse, sign and seal the same indenture, and deliver it as their and each of their voluntary acts and deeds, for the uses and purposes therein mentioned; and I having carefully inspected the same, and finding no material erasures or interlineations therein, other than those noted to have been made before the execution thereof, do allow the same to be recorded. John Sloss Hobart." Upon the back of which said deed was also endorsed a certificate, of the recording thereof, in the following words: "Recorded in the Secretary's office of the State of New York, in deed book commencing 25th November, 1774, page 550. Examined by me this 11th April, 1787. Robert Harper, deputy secretary."

Josiah Ogden Hoffman, Esquire, a witness sworn on the part of the plaintiff, testified, that he was acquainted with William Livingston and Sarah Williams, and with their respective handwriting, and that he believes the names of William Livingston and Sarah Williams, subscribed to the said deed as witnesses, are in the proper handwriting of the said witnesses respectively; that said Livingston is dead, and he has no doubt that Mrs. Williams is also dead, not having seen or heard of her since the year 1799; that Mrs. Williams was a connection of the family of Frederick Philipse, the heir of Adolph Philipse.

The attestation clause to said deed was written as follows:

"Sealed and delivered the words [then south ten degrees west, along the line of lot number six,] being first interlined between the sixteenth and seventeenth lines of the first sheet, and the word [thirteenth] wrote on a razure. In presence of William Livingston, Sarah Williams."

The line noting the razure appeared to have been written in after the attestation clause, noting the interlination and containing the words "in presence of" had been prepared, and in the date of the deed the word "thirteenth" was written on a razure.

Beverly Robinson being again called on the part of the plaintiff, testified, that according to reputation in the family, Frederick Philipse (the great nephew of Adolph) died leaving four children, namely, Philip, Susannah, Mary, and Margaret, and that Margaret died soon after her father; that Susannah married Col. Beverly Robinson, the grand father of the witness, and one of the trustees named in the settlement deeds, and that Mary married Roger Morris; that Johannah Philipse, one of the trustees named in the said settlement deed, was the mother of Mary; that the said Johannah died many years ago, and before the war of the revolution; that Col. Beverly Robinson died between the years of our Lord seventeen hundred and ninety and seventeen hundred and ninety-five, and Susannah his widow died eight or nine years ago; that Roger Morris died between the years seventeen hundred and ninety and eighteen hundred, and Mary his widow died in the year 1825; that Roger and Mary Morris had four children, namely, Amherst, Henry Gage, Johannah, and Maria; that Amberst died a batchelor about the year seventeen hundred and ninety-four; that he was a captain in the British army; and Johannah married Thomas Cowper Hineks; that Maria never married. Witness further said, that he did not recollect ever having seen Morris or his wife, but he had a strong impression, and believes that he saw

854.

their two daughters in the City of New York, after the close of the war, in the year 1783, and they were then grown up; that his impression is, that the daughters were the youngest of the children of Morris, and that the youngest of the daughters was then fourteen or fifteen years old; that witness was then hardly four years old; has not a very distinct recollection of that period; that on the termination of the war of the revolution, and in the fall of the year 1783, the witness with his father and mother went to Nova Scotia; and he had always understood that Morris and his family at that time went to England.

The plaintiff then gave in evidence a conveyance by way of lease and release, bearing date, the lease the eighteenth, and the release the nineteenth day of December, in the year of our Lord eighteen hundred and nine, between the said Thomas Cowper Hincks and Johannah his wife, Maria Morris and Henry Gage Morris of the first part, and the said John Jacob Astor, an abstract of which said release (agreed upon by both parties) is contained in a schedule hereunto annexed, marked D. The said lease and release had been severally duly acknowledged, soon after their date, and were severally recorded in the office of the Secretary of State of the State of New York, on the fifth day of December, in the year of our Lord eighteen hundred and fifteen. The plaintiff then read an act of the Legislature of the State of New York, entitled "An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this State, and for declaring the sovereignty of the people of this State in respect to all property within the same," passed 22d October, 1779; and it was thereupon admitted that Beverly Robinson and Susannah his wife, Roger Morris and Mary his wife, mentioned in, and attained by the said act, are the same persons by those names herein before mentioned.

The plaintiff then proved by several witnesses, and by the production of receips given by Roger Morris for rent, that said Morris for several years before, and down to the commencement of the war of the revolution, was in the possession of the said lots, three, five and nine, taking the rents and profits thereof, that he had a house near the Red Mills, on lot number five, and came there spring and fall to collect rents.

Joseph Crane, a witness sworn on the part of the plaintiff, testified that he was sixty-four years old; that he is the son of John Crane, who had been dead about three years; that his father lived on the farm now occupied by the defendant, which is a part of said lot number five, under Roger Morris, from before the war of the revolution, and continued in the occupation thereof until his death; that the defendant was born and still lives on the said farm.

The plaintiff, pursuant to a notice for that purpose, then called upon the defendent to prove the following deeds, which, being produced, were read in evidence on the part of the plaintiff, as follows: *first*—A deed from Samuel Dodge, Daniel Graham, and John Hathorn, commissioners of forfeitures for the middle district of New York, to the said John Crane, in fee for one hundred and sixty-four acres of land, being part of said lot number five, and the premises in question in this suit, bearing date the first day of June, in the year of our Lord seventeen hundred and eighty, which said deed was in the form prescribed by the aforesaid act of the Legislature of the State of New York. *Second*—A deed from the said John Crane to the defendant, in fee, for the same land, bearing date the second day of September, in the year of our Lord eighteen hundred and twenty-six, for the consideration of two

thousand five hundred dollars, with covenants of seisin in fee and general warranty. It was admitted by the counsel of the parties that the premises in question were of the value of two thousand dollars and upwards.

And upon the proofs so given as aforesaid, the plaintiff rested his case.

And thereupon the counsel for the defendant objected, and insisted that unless the deed, commonly called a marriage settlement deed, which had been given in evidence, was accompanied or preceded by a lease, the plaintiff could not recover in this action; that without a lease the said deed could only operate as a deed of bargain and sale, and the statute of uses would only execute the first use to the bargainees, Johannah Phillipse and Beverly Robinson, who took the legal estate in the land, and that the plaintiff could not recover without producing the lease or accounting for its non-production. And because no lease had been produced, and no evidence given to account for its non-production, the counsel for the defendant moved the said circuit court to nonsuit the plaintiff; but the said circuit court, before the said Justice and Judge, then and there overruled the said objection, and refused to grant the said motion for a nonsuit, and decided that the said plaintiff was entitled to recover without producing any lease, or accounting for its non-production, in as much as the recital in the release was evidence of such a lease having been executed; to which said opinion and decision of the said circuit court the counsel for the said defendant, then and there on the said trial, excepted. And thereupon the counsel for the said defendent, to maintain and prove the said issue on his part, produced and read in evidence a conveyance by way of lease and release, bearing date, the lease the seventeenth, and the release the eighteenth day of September, in the year of our Lord seventeen hundred and seventy-one, the lease being between the said Roger Morris of the first part, and William Hill of the second part, and the release being between the said Roger Morris and Mary his wife of the first part, and the said William Hill of the second part, by which said lease and release the said parties of the first part, for the consideration of two hundred and twenty pounds, did grant, bargain, sell, alien, release, and confirm unto the said William Hill, his heirs and assigns for ever, a part of the said great lot, number five, particularly described in said lease and release, containing fifty-three acres.

The said deeds did not mention or profess to be made under or in pursuance of any deed or deeds of marriage settlement, or that they were made in the execution of any power. And by the said release the said Roger Morris covenanted for himself and his heirs, that he was lawfully seized of the premises granted in fee simple, and that he had good right, full power, and lawful authority, to grant, bargain, and sell the same as aforesaid; and the said release also contained the usual covenants for quiet enjoyment, against all former incumbrances and grants of general warranty and for further assurance. The said release was duly acknowledged by the grantors, before Charles Ward Apthorp, one of his Majesty's council for the province of New York, on the day of its date. The said lease had not been acknowledged, nor had either the lease or release been recorded.

The counsel for the defendant also produced and read in evidence a conveyance, by way of lease and release, bearing date, the lease the seventeenth, and the release the eighteenth day of September, in the year of our Lord seventeen hundred and seventy-one; the lease being between the said Roger Morris of the first part, and Joseph Merrit of the second part, and the release being between the said Roger Morris and Mary his wife of the first

853.

part, and the said Joseph Merrit of the second part, by which said lease and release, the said parties of the first part, for the consideration of two hundred and twenty-five pounds, did grant, bargain, sell, alien, release, and confirm unto the said Joseph Merritt, his heirs and assigns for ever, a part of said great lot number five, particularly described in said lease and release, containing two hundred acres. The said deeds did not mention or profess to be made under or in pursuance of any deed or deeds of marriage settlement, or that they were made in the execution of any power. The release contained the like covenants as were contained in the last above mentioned release to William Hill, and was duly acknowledged by the grantors at the same time and before the same officers as the said release to William Hill; it was recorded November 17, 1825.

The counsel for the defendant then produced and read in evidence a conveyance, by way of lease and release, the release bearing date the twenty-seventh day of September, in the year of our Lord seventeen hundred and sixty-five, between the said Roger Morris and Mary his wife of the first part, and William Hill of the second part, by which said lease and release the said parties of the first part, for the consideration of seven hundred and fifty pounds, did grant, bargain sell, alien, release, and confirm unto the said William Hill, and to his heirs and assigns for ever, a part of said great lot number five, particularly described in said deeds, containing two hundred and forty-five acres. The said deeds did not mention or profess to be made under or in pursuance of any deed or deeds of marriage settlement, or that they were made in the execution of any power. The parties of the first part in the said release were described as follows:

"Between the honorable Roger Morris, of the City of New York, Esquire, and Mary his wife, late Mary Philipse, one of the daughters and devisees of the honorable Frederick Philipse, Esq., deceased, of the one part;" and the description of the land granted, commenced as follows, to wit: "All that certain farm and plantation, situate, lying, and being in the county of Dutchess aforesaid, and known and distinguished by farm number thirty-six of lot number five, of the lands formerly granted by letters patent to Adolph Philipse, Esq., from whom the same descended to the said Frederick Philipse, Esquire, as his heirs at law; the lands so granted by the same letters patent, being usually called and known by the several names of Fredericksburgh, and Philipse upper patent, which said farm or plantation, number thirty-six, begins," &c.

And by the said release, the said Roger Morris, for himself and the said Mary his wife, their heirs, &c., covenanted that he, the said Roger Morris and Mary his wife, at and immediately before the ensealing and delivering of the said deed, were seized in fee of the lands granted; that they had good right, full power, and lawful authority to release and convey the same in fee; and the said release also contained the usual covenants of general warranty, for quiet and peaceable seisin and enjoyment, against incumbrances and grants and for further assurance. The said release was duly ackuowledged by the grantors, before John Watts, Esq., one of his Majesty's council for the province of New York, on the 23d day of October, in the year of our Lord seventeen hundred and sixty-five; and was recorded May 25th, 1827. The lease was neither acknowledged or recorded.

The counsel for the defendant also produced and read in evidence a conveyance, by way of lease and release, bearing date, the release, the eighteenth

day of September, in the year of our Lord seventeen hundred and seventy-one, between the said Roger Morris and Mary his wife of the first part, and James Rhodes of the second part, by which said lease and release the said parties of the first part, for the consideration of two hundred and twenty-five pounds, did grant, bargain, sell, alien, release, and confirm unto the said James Rhodes, his heirs and assigns for ever, a part of the said lot number five, particularly described in said deeds, containing two hundred and two acres, with the like covenants as were contained in the last above mentioned deed. The said deeds did not recite or profess to be made under or in pursuance of any deed of marriage settlement, or in the execution of any power. The said release was duly acknowledged on the day of its date.

The counsel for the defendant then read in evidence the exemplification of a deed, bearing date the eighteenth day of January, in the year of our Lord seventeen hundred and fifty-eight, between the said Beverly Robinson and Susannah his wife, Philip Philipse, and Mary Philipse, of the first part, and Henry Beekman, Catharine Pawling and Robert G. Livingston, of the second part, a true copy of which said deed is contained in a schedule hereunto annexed, marked G; which said deed was proved by William Scott, one of the subscribing witnesses, on the fourteenth day of February, in the year of our Lord seventeen hundred and fifty-eight, before John Van Courtlandt, "one of the masters of his Majesty's high court of chancery, for the Province of New York, and was recorded in the office of the clerk of the county of Dutchess, on the 25th day of March, in the year last aforesaid.

The counsel for the defendant then read in evidence the exemplification of a deed, bearing date the eighteenth day of February, in the year of our Lord seventeen hundred and seventy-one, between the said Beverly Robinson, Roger Morris, John Ogilvie, Adolph Philipse, and Nathaniel Marston, as guardian to and in right of Frederick Philipse and Nathaniel Philipse, sons of Phillip Philipse, deceased, of the one part, and Samuel Verplank of the other part, a true copy of which said deed is contained in a schedule hereunto annexed, marked H; which said deed was proved by Thomas Marston, one of the subscribing witnesses, on the fourth day of May, in the year of our Lord seventeen hundred and seventy-three, before Hugh Wallace, Esq., one of his Majesty's counsel for the province of New York, and was recorded in the office of the Secretary of the colony of New York.

The counsel for the defendant then read in evidence the exemplification of a patent granted to the said Beverly Robinson, Roger Morris, and Philip Philipse, bearing date the twenty-seventh day of March, in the year of our Lord seventeen hundred and sixty-one, a true copy of which said patent is contained in a schedule hereunto annexed, marked F.

The counsel for the defendant then read in evidence an indenture of lease, bearing date the twenty-third day of October, in the year of our Lord seventeen hundred and sixty-five, between the said Robert Morris and Mary his wife of the one part, and Samuel Dickinson of the other part, by which said lease the said Roger Morris and Mary his wife, for and in consideration of the rents and covenants therein mentioned, did grant, demise, and to farm let, unto the said Samuel Dickinson and his assigns, a part (particularly described in said lease) of the said lot number nine, containing three hundred and ninety-six acres; to have and to hold the same, with the appurte-

850.

nances, unto the said Samuel Dickinson and his assigns, from the first day of September (then) last past, for and during the term of his natural life; yielding, rendering, and paying therefor yearly and every year, during the term thereby demised, unto the parties of the first part, their heirs and assigns, the yearly rent of thirty bushels of clean merchantable wheat, to be delivered, &c.; which said lease contained a condition for re-entry on non-payment of rent, or for assigning without a license; and the tenant covenanted that he would pay the rent and all taxes; that he would give the parties of the first part, every year, the pre-emption or refusal of buying all such grain and corn as should be raised upon the premises, and the tenant should incline to sell and dispose of; that if the tenant should at any time be desirous of disposing of his term in the premises, or in any part thereof, he would offer and give the parties of the first part the pre-emption, buying or purchasing of the same; that the tenant and his assigns would bring and grind all the grain used in his or their families at the grist mill of the parties of the first part, their heirs and assigns, paying the one-tenth part for the toll of grinding, which toll was to commence and be paid as soon as the parties of the first part, their heirs or assigns, should have a grist mill built and in good repair; and that at the end of the term thereby granted, the said tenant, his heirs, executors, administrators, and assigns, would quietly and peaceably yield, surrender, and deliver up the said premises, unto the said parties of the first part, their heirs and assigns. The said lease was witnessed as follows: "Sealed and delivered in presence of Bev. Robinson, David Wolf."

The counsel for the defendant then read in evidence an indenture of lease, bearing date the twenty-first day of June, in the year of our Lord seventeen hundred and seventy-three, between the said Roger Morris and Mary his wife of the one part, and Jacob Kniffin of the other part, by which said indenture of lease, the said Roger Morris and Mary his wife, for and in consideration of the rents, covenants, and agreements therein reserved and contained, did demise, grant, lease, and to farm let to the said Jacob Kniffin, his heirs, executors, administrators and assigns, a part (particularly described in said lease) of said great lot number five, containing two hundred and fifty-eight acres. To have and to hold the said demised premises, with the appurtenances, &c., "to the said Jacob Kniffin, his heirs and assigns, from the first day of May (then) last, for and during the natural lives of Jacob Kniffin of the second part, of Mary Kniffin, wife of Jacob Kniffin, of the second part, (then) aged forty years or thereabouts, and of Jonathan Kniffin, (then) aged fourteen years or thereabouts, son of Jacob Kniffin, of the second part, and for and during the natural life and lives of the longest liver of them," yielding and paying, &c.

The said lease contained various covenants on the part of the tenant, that he, his heirs and assigns, would pay the rent reserved; that within five years from the commencement of the term, he and they would plant on the described premises, two hundred and sixty young and thrifty apple trees, and preserve the same, and replant in case of the destruction of any of them; and, also, would within the like period clear, improve, and make fit for mowing, ten acres of swamp or meadow ground on the premises, and sow the same with clover, or other good grass seed, and fence and keep the same property fenced, and in each succeeding five years, would, in like manner, clear, fence, and improve five acres of the said premises, if there was or should be so much swamp or meadow land; that the tenant, his heirs

or assigns, would not sell, cut down, destroy, use, or dispose of any wood or timber on the demised premises, other than such as should be necessary for building, fencing, fuel, making and repairing utensils of husbandry, and such as should be necessary and conducive to the clearing and better cultivation of the premises; that the tenant, his heirs or assigns, should not impoverish the premises by bad husbandry, and would not assign the demised premises, or any part thereof, or erect any saw or grist or other mill thereon, without the license of the parties of the first part, their heirs or assigns, in writing; that the tenant, his heirs and assigns, at the end of the term, would peaceably and quietly surrender up the premises to the parties of the first part, their heirs and assigns, with all the buildings and improvements thereon, without doing or suffering any waste or destruction; and the said parties of the first part, for themselves, their heirs, executors, administrators, and assigns, covenanted with the said tenant, his heirs and assigns, in the usual form, for quiet enjoyment during the term granted, and for general warranty. The said lease was witnessed as follows: "Sealed and delivered in presence of us, James Dickinson, jr., Wm. Henderson."

The counsel for the defendant thereupon read in evidence an indenture of lease, bearing date the sixteenth day of June, in the year of our Lord seventeen hundred and seventy-three, between the said Roger Morris and Mary his wife, of the one part, and Nehemiah Smith and Ezra Richards of the other part; which said lease, the said Roger Morris and Mary his wife, for and in consideration of the rents, covenants, and agreements thereinafter reserved and contained, did demise, grant, lease, and to farm let unto the said Nehemiah Smith and Ezra Richards, a part (particularly described in said lease) of said lot number nine, containing one hundred and ninety-three acres; to have and to hold the same, with the appurtenances, &c., "unto the said Nehemiah Smith and Ezra Richards, their heirs, executors, administrators, or assigns, from the first day of May (then) last, for and during the natural lives of the said Nehemiah Smith, aged twenty-three years or thereabouts, and Ezra Richards, aged twenty-two years or thereabouts, and Nehemiah Smith, jr., son of the above said Nehemiah Smith, aged two years, or thereabouts," yielding, rendering, and paying therefor a certain annual rent therein reserved. And the said lease contained covenants on the part of the tenements similar to those contained in the above mentioned lease to Jacob Kniffin, and the lessors covenanted in the usual form for quiet enjoyment and general warranty during the term thereby granted. The said lease was witnessed as follows: "Sealed and delivered in the presence of us, William Henderson, James Richards."

The body of each of the said three last mentioned leases was written or engrossed in a fair handwriting, with blanks for the dates, names of the lessees, description of the lands demised, the duration of the term, and the amount and kind of rent reserved, which blanks had all been filled up, in the said three leases, in a different handwriting from that in which they were drawn. The execution of each of the said leases was duly proved.

Truman Smith, a witness sworn on the part of the defendant, testified that he was the son of Nehemiah Smith, one of the lessees, in the last above mentioned lease; that his father and the other lessee, Ezra Richards, lived neighbors to each other, their farms joining each other, in the town of South East, but they are both now dead; that Nehemiah Smith, jr., mentioned in said lease, is the brother of the witness, and is now living; he lives about forty miles west of New Burgh.

857.

John Watts, Esquire, a witness sworn on the part of the defendant, testified that he was well acquainted with Col. Roger Morris, before and during the war of the revolution; he was an officer in the British army; that Morris went to England in the year seventeen hundred and seventy-six, and returned after an absence of a year or a little more; that during all the rest of the war Morris was, as he believes, in the City of New York, and within the British lines; that Col. Beverly Robinson, with whom the witness was well acquainted, also remained through the war within the British lines in New York; that at or about the time that the British troops evacuated the City of New York, after the peace, (November 25th, 1783,) Col. Robinson went with his family to Nova Scotia, and Col. Morris and his family went with the British troops to England; and that neither Col. Morris or any of his family have been in this country since that period, to the knowledge or belief of the witness.

On examining the leases herein before mentioned, the witness testified that he was well acquainted with the handwriting of Col. Morris; that the body of each of the said leases was written in a large and fair hand, with blanks for the names of lessees, dates, description of demised premises, amount of rents and the like, which blanks had all been filled up in the proper handwriting of the said Roger Morris. On being shown the said settlement deed, the witness testified that the same was transmitted to him in New York by Roger Morris, who was then in London, England, just before the time that it was proved by William Livingston before Judge Hobart, and the witness procured the said proof to be made; that said Livingston was at that time Governor of the State of New Jersey, and according to his recollection was, at the time of the proof, in this city, on a visit at the house of Judge Hobart; that the certificate of the proof endorsed upon the said deed is all in the proper handwriting of the witness, except the name of the officer in the body of the certificate and the name of Judge Hobart, subscribed at the bottom, which are in the proper handwriting of said Judge; that the witness drew the said certificate of proof before he went before the officer, and presumes he must have drawn it before he knew what officer could take the proof, having left a blank for the insertion of his name; that neither the Judge nor said Livingston were present when the certificate was drawn.

Cross-examined by plaintiff. Witness says that he had spoken to said Livingston about proving the deed, before he went before the Judge, and he went by appointment with said Livingston.

The counsel for the defendant then produced and read in evidence the books of records from the office of the Register of the city and county of New York, from which it appeared that deeds and conveyances of land (as well as various other instruments in writing) had been acknowledged by the grantors, or proved by the subscribing witness, and recorded from a period anterior to the year seventeen hundred and fifty-eight down to the close of the war of the revolution; and that during the whole period of the war, except from March to September, in the year 1783, deeds had been acknowledged or proved, and recorded; but from March 1, 1783, to March 17, 1784, no deeds had been recorded; some of which were acknowledged or proved before the members of his Majesty's counsel, others before aldermen of the said city; some before masters in chancery, and others before the judges of county courts, in other counties; and it also appeared that deeds of lands, in other counties of the State, were recorded in the city and

county of New York; and it also appeared, as to the deeds proved, before and after the close of the war, (and of the last class a considerable number had been proved before Judge Hobart,) that the certificates of proof stated the delivery as well as the execution of the deed.

The particular character of the deeds and conveyances was not examined into or stated, but the records were produced for the purpose of showing the fact of the proving and recording of deeds and conveyances, and the form or manner in which it was done.

And thereupon the plaintiff read in evidence a part of the deposition of Thomas Barclay, in which he testified that he knew Col. Roger Morris, and his wife Mary, about the year seventeen hundred and fifty-nine; they were then married, and lived in the City of New York.

Nicholas Fish, a witness sworn on the part of the plaintiff, testified that he had been well acquainted with Governor Livingston; that he was a distinguished man in the war of the revolution and a patriot. And thereupon it was admitted that said Livingston was a practising lawyer and counsellor in the City of New York before the revolution, and was highly respectable in his profession.

And hereupon, the proofs having closed, and the counsel for both parties having summed up the said cause to the jury, the counsel for the plaintiff submitted to the said circuit court the following points:

I. That the acts or declarations of the parties to the setlement, after the birth of the children, form no ground of presumption in this action against the delivery of the settlement deed.

II. That Roger Morris stood in the character of a grantee in that deed, and that a possession of the deed by him is evidence of its delivery, because the settlement gave him a larger interest in the lands than his mere marital rights.

III. That the actual signing and sealing of this deed by Beverly Robinson and Joanna Philipse, as well as by the other parties, and the attestation by the subscribing witnesses, that the deed was signed, sealed, and delivered in their presence, by all the parties, as proved on the part of the plaintiff, are in judgment of law complete evidence of such delivery, and of an acceptance of the estates therein granted and limited.

And thereupon the counsel for the defendant submitted to the said circuit court, the following points in writing, on the question of a delivery of the settlement deed, of January 13, 1758; upon which points the said counsel prayed the said circuit court to charge and instruct the jury, as matters of law arising upon the proofs and allegations of the parties.

I. That it was necessary to the validity of the deed that it should have passed into the hands of the trustees, or one of them, or some person for them, with the intent that it should take effect as a conveyance.

(2.) It is not enough that the trustees, as well as the other parties, signed and sealed, unless the deed was also delivered to and accepted by them, or some person on their behalf.

II. The evidence arising from the proof of the deed by William Livingston, in 1787, is no stronger than that arising from the proof of the handwriting and death of the subscribing witnesses.

(2.) In either case it is only prima facie evidence, or evidence from which a delivery may be presumed, and may be rebutted by direct or circumstancial evidence, which raises a contrary presumption.

III. That in the absence of all proof, that the trustees, or any other per-

858.

son for them, ever had the deed, and there being no proof of a holding under it, the fact that the deed came out of the hands of Morris, in 1787, is sufficient of itself to rebut any presumption of a delivery arising from the proof of the deed by William Livingston, or the proof of the handwriting and death of the subscribing witnesses.

IV. If the jury, from the evidence, believe that the deed was signed and sealed on the day of its date, and that all William Livingston and Sarah Williams witnessed was what took place at that time, and that the deed was not delivered before the execution of the Beekman deed, on the 18th January, 1758, then there is no evidence of a delivery.

(2.) It being conceded by the plaintiff's counsel, that the deed was not delivered at the time of the execution of the Beekman deed, on the 18th January, 1758, then, if the jury believe the deed was signed, sealed, and witnessed, on the day it bears date, there is no evidence of a delivery.

(3.) If the jury believe the deed was not delivered on the day it was signed, sealed, and witnessed, then there is no evidence of a delivery.

V. The acts and omissions of Morris and wife, so far as they go to induce the belief that the deed was not perfected by a delivery, are of the same force and effect against the children and their grantee, as they would be against Morris and wife themselves.

VI. The jury, in judging of the acts said to be hostile to the settlement deeds, if they may determine with what intent those acts were done, must gather that intent from the acts themselves.

VII. Although the deeds to Hill, Merritt, and Rhodes, would in law be a good execution of the power contained in the settlement deed, supposing that to have been duly delivered; yet upon the question whether that deed was or was not perfected by a delivery, those deeds contain evidence that the parties were acting as the owners of the land in fee, and not as tenants for life executing a power.

VIII. The evidence upon the one side or the other should not be submitted to the jury as prima facie or presumptive evidence, either for or against a delivery; but the jury should consider and weigh the whole evidence together, and from the whole, determine whether or not the deed was delivered.

And thereupon the opinion of the said circuit court upon the points submitted on the part of the defendant was delivered in substance as follows:

To the first point, and the second branch of it, the said court gave the instructions as asked on part of the defendant.

Upon the second of the said points, the said circuit court overruled and refused to give the same to the jury; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the second branch of the said second point, the said circuit court gave the instructions as follows: the proof by William Livingston, and the proof of the handwriting and death of the witnesses, are only prima facie evidence, from which a delivery may be presumed, and may be rebutted by direct or circumstancial evidence, which raises a contrary presumption.

Upon the said third point, the said circuit court overruled and refused to give the instructions therein prayed for to the jury; to which said decision and opinion of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the said fourth point, the said circuit court overruled and refused

to give the instructions therein prayed for as matter of law, but that it was evidence for the consideration of the jury; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the second branch of the said fourth point, the said court overruled and refused to give the instruction therein prayed for to the jury, saying that such supposed concession was denied by the plaintiff's counsel, and they refused to give any instruction thereon; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the third branch of the said fourth point, the said circuit court overruled and refused to give the instruction therein prayed for to the jury; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the said fifth point, the said circuit court gave the instruction, as prayed for, to the jury.

Upon the said sixth point, the said circuit court overruled and refused to give the instruction therein prayed for to the jury, without adding to the said point the following words, to wit: "connected with the other evidence in the cause;" and with that addition, gave the said instruction to the jury; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the said seventh point, the said circuit court overruled and refused to give the instruction as prayed, but gave the instruction following: "although the deeds to Hill, Merritt, and Rhodes, would in law be a good execution of the power contained in the settlement deed, supposing that to have been delivered, yet, upon the question of whether that deed was or was not perfected by delivery, those deeds are competent evidence, from which the jury may judge whether Morris and his wife intended to act as if no marriage settlement had been executed, or under the power contained in the marriage settlement;" to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the said eighth point, the said circuit court overruled and refused to give the instruction therein prayed for to the jury; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

And the opinion of the said circuit court, upon the points submitted by the counsel for the plaintiff, was delivered in substance as follows, to wit:

Upon the first of those points, that the acts of Morris and wife were proper evidence to be considered by the jury in determining whether the settlement deed was delivered or not.

Upon the second of those points, that, strictly speaking, Morris could neither be considered as grantor or grantee in the settlement deed, and therefore the mere possession of the deed by him was no affirmative proof on either side as to the fact of delivery; to which said opinion and decision of the said circuit court, the counsel for the defendant, then and there on the said trial, also excepted.

Upon the third of those points, that if by "complete evidence," it was intended that the plaintiff's evidence was conclusive, or such as could not be controverted, the said instruction should not be given to the jury.

And inasmuch as the several matters aforesaid do not, and will not, ap-

839.

pear by the record of the verdict of the said jury, the counsel for the said defendant did then and there, on the said trial, propose their several exceptions aforesaid to the several decisions, opinions, and charge of the said circuit court, as herein before set forth, and required the said justice and judge to put their seals to this bill of the said exceptions, according to the form of the statute in such case made and provided. And thereupon the said justice and judge, at the request of the said counsel for the defendant, did then and there, on the said trial, severally put their seals to this bill of the said exceptions, pursuant to the statute in such case made and provided, this eighth day of June, in the year of our Lord eighteen hundred and thirty.

SMITH THOMPSON, [L. S.]
SAMUEL R. BETTS. [L. S]

GREENE C. BRONSON, *Attorney,*
and of counsel for defendant.

SCHEDULE A.

William the Third, by the Grace of God, King of England, Scotland, France, and Ireland, defender of the faith, &c. To all to whom these presents shall come sendeth greeting: Whereas our loving subject, Adolph Philips, of our City of New York, merchant, hath by his petition presented unto our trusty and well beloved Benjamin Fletcher, our Captain-General and Governor-in-Chief of our province of New York, and territories depending thereon in America, &c., prayed our grant and confirmation of a certain tract of land in our Dutchess county, situate, lying and being in the Highlands, on the east side of Hudson's river, beginning at a certain red cedar tree, marked, on the north side of the Hill commonly called Anthony's Nose, which is likewise the north bounds of Colonel Stevanus Cortlandt's land, or his manor of Cortlandt, and from thence bounded by the said Hudson's river, as the said river runs northerly, until it comes to the creek, river, or run of water commonly called and known by the name of the Great Fishkill, to the northward, and above the said Highlands, which is likewise the southward bounds of another tract of land belonging unto the said Colonel Stevanus Cortlandt and company, and so easterly along the said Colonel Cortlandt's line, and the south bounds of Col. Henry Beekman, until it comes twenty miles, or until the division or partition line between our colony of Connecticut and our said province, and easterly by the said division line, being bounded northerly and southerly by east and west lines unto the said division line between our said colony of Connecticut and this our province aforesaid, the whole being bounded westward by the said Hudson's river, northward by the land of Col. Cortlandt and company and the land of Col. Beekman, eastward by the partition line between our colony of Connecticut and this our province, and southerly by the manor of Cortlandt to the land of the said Col. Cortlandt, including therein a certain island at the north side of the said Highlands, called Pollepell's island; which reasonable request we being willing to grant, know ye, that of our special grace, certain knowledge, and mere motion, we have given, granted, ratified, and confirmed, and by these presents do, for us, our heirs, and successors, give, grant, ratify, and confirm, unto the said Adolph Philips, all the afore recited certain tract of land and island, within the limits and bounds aforesaid, together with all and singular the woods, underwoods, trees, timber, hills, mountains, vallies, rocks, quarries, marshes, swamps, rivers,

runs, rivulets, waters, water courses, pools, ponds, lakes, fountains, streams, meadows, fresh and salt mines, minerals, (silver and gold mines excepted,) fishing, fowling, hunting, and hawking, and all other royalties, rights, members, benefits, profits, advantages, commodities, privileges, hereiditaments, and appurtenances whatsoever, unto the afore recited certain tract of land and island within the limits and bounds aforesaid, belonging or in any ways appertaining; to have and to hold all the afore recited certain tract of land and island, within the limits and bounds aforesaid, together with all and singular the woods, underwoods, trees, timber, hills, mountains, vallies, rocks, quarries, marshes, swamps, rivers, runs, rivulets, waters, water pools, ponds, lakes, fountains, streams, meadows, fresh and salt mines, minerals, (silver and gold mines excepted,) fishing, fowling, hunting, and hawking, and all other royalties, rights, members, benefits, profits, advantages, commodities, privileges, hereditaments, and appurtenances whatsoever, unto the afore recited certain tract of land and island, within the limits and bounds aforesaid, belonging or in any ways appertaining, unto the said Adolph Philipse, his heirs and assigns forever, to the sole and only proper use, benefit, and behoof of him, the said Adolph Philipse, his heirs and assigns forever. To be holden of us, our heirs and successors, in free and common soccage, as of our manor of East Greenwich, in our county of Kent, within our realm of England, yielding, rendering, and paying therefor, yearly and every year, unto us, our heirs and successors forever, at our City of New York, on the feast day of the annunciation of our blessed Virgin Mary, the yearly rent of twenty shillings, current money of our said province, in lieu and stead of all other rents, services, dues, duties, and demands whatsoever, for the said tract of land, island, and premises. In testimony whereof, we have caused the great seal of our said province to be hereunto affixed. Witness, our trusty and well beloved Benjamin Flether, our said Captain-General and Governor-in-Chief of our province of New York, and territories depending thereon, in America, and Vice-Admiral of the same, our Lieutenant and Commander-in-Chief of the militia, and of all the forces by sea and land within our colony of Connecticut, and of all the forces and places of strength within the same. In council at our fort, in New York, the seventeenth day of June, in the ninth year of our reign, Anno Dom. 1697.

BENJAMIN FLETCHER.

By his Excellency's command.

DAVID JAMISON, *D. Secretary.*

SCHEDULE B.

Lot number three, beginning at two hemlock bushes standing in a cully between Bull and Breakneck hills, on the east side of Hudson's river, and from thence running north seventy-seven degrees east three hundred and eighty-six chains, to a heap of stones and walnut bush, marked P R, 1753, standing in the west line of lot number four, and is also the northeast corner of lot number two; then north ten degrees east two hundred and twenty-eight chains, to a heap of stones thirty links north of a white oak tree, marked P, 1753, being the northwest corner of lot number four; then south eighty-seven degrees west four hundred and eighty chains, to the mouth of the Fishkill; from thence down the several courses of Hudson's river to the beginning, including Pollaple's island, containing about eight thousand six hundred acres. Lot number five, beginning at a heap of stones in the line of the manor Cortlandt, at the south east corner of lot number four; then north ten degrees east nine hundred and forty seven chains, to a

800.

heap of stones at the northeast corner of lot number four; then north eighty-seven degrees east three hundred and forty-four chains, to a heap of stones, which is the northwest corner of lot number six; then south ten degrees west, along the line of lot number six, nine hundred and sixty chains, to a heap of stones in the line of the manor Cortlandt, at the southwest corner of lot number six; then west along the line of the manor Courtlandt, three hundred and forty chains to the beginning, containing about thirty-one thousand two hundred acres. Lot number nine beginning at a hemlock tree, standing on the south side of the east branch of Croton river, and a heap of stones on the north side, which is also the southeast corner of lot number six, in the line of the manor Cortlandt; from thence running north ten degrees east three hundred and thirty-three chains, to a heap stones and walnut tree, marked P R, 1753, on the south side of a hill near an old meeting house, in the line of lot number six, being the southwest corner of lot number eight; then east, along the line of lot number eight, three hundred and thirty-seven chains, to a chesnut bush, marked P R, 1753, standing in the oblong line on the west side of a rocky hill, which is the southeast corner of lot number eight; then southerly, as the oblong line runs, three hundred and thirty-three chains, to the northeast corner of the manor of Courtlandt, in Peach pond; then west, along the said manor of Courtlandt, three hundred and thirty-six chains to the beginning, containing about eleven thousand two hundred and twenty acres. And one third part of the meadow land lying in lot number two, beginning five chains from the upland upon Danford's creek, and running to Crooked creek, five chains from the upland; then down Crooked creek to the meadow belonging to lot number one; then northwest to meet Leek's rock; then along the upland, the north side of a little island in the meadow, to the mouth of Danford's creek; then up the said creek to the beginning, containing about eighty-two acres.

SCHEDULE C.

This indenture, made the thirteenth day of January, in the thirty-first year of the reign of our sovereign lord, George the Second, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith &c., and in the year of our Lord one thousand seven hundred and fifty-eight, between Mary Philipse of the first part, Major Roger Morris of the second part, and Johanna Philipse and Beverly Robinson of the third part, witnesseth, that in consideration of a marriage intended to be had and solemnized between the said Roger Morris and Mary Philipse, and the settlement hereafter made by the said Roger Morris on the said Mary Philipse, and for and in consideration of the sum of five shillings, current money of the province of New York, by the said Johanna Philipse and Beverly Robinson, to her the said Mary Philipse, at or before the ensealing and delivery of these presents, well and truly paid, the receipt whereof is hereby acknowledged, and for divers other good causes and considerations, her thereunto moving, she, the said Mary Philipse, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said Johanna Philipse and Beverly Robinson, (in their actual possession now being, by virtue of a bargain and sale to them thereof made, for one whole year, by indenture bearing date the day next before the day of the date of these presents, and by force of the statute for transferring of uses into possession,) and to their heirs, all those several lots or parcels of land, known

by the several names of lot number three, number five, and number nine, and one third part of the meadow land lying in lot number two, which lots, number three, five, nine, and two, are part of a certain tract or parcel of land granted unto Adolph Philipse, since deceased, by his late majesty King William the Third, by his letters patent, under the great seal of the province of New York, bearing date the seventeenth day of June, in the year of our Lord one thousand six hundred and ninety-seven, situate, lying, and being in Dutchess county, in the Highlands, on the east side of Hudson's river, and are butted and bounded as follows, to wit: lot number three, beginning at two hemlock bushes, standing in a gully between Bull and Breakneck hills, on the east side of Hudson's river, and from thence running north seventy-seven degrees east three hundred and eighty six chains, to a heap of stones and walnut bush, marked P R, 1753, standing in the west line of lot number four, and is also the northeast corner of lot number two; then north ten degrees east two hundred and twenty-eight chains, to a heap of stones, thirty links north of a white oak tree, marked P, 1753, being the northwest corner of lot number four; then south eighty-seven degrees west four hundred and eight chains, to the mouth of the Fishkill; from thence down the several courses of Hudson's river, to the beginning, including Pollaple's island, containing about eight thousand six hundred acres; lot number five, beginning at a heap of stones in the line of the manor Courtlandt, at the southeast corner of lot number four; then north ten degrees east nine hundred and forty-seven chains, to a heap of stones at the northeast corner of lot number four; then north eighty-seven degrees east three hundred and forty-four chains, to a heap of stones, which is the northwest corner of lot number six; then south ten degrees west, along the line of lot number six, nine hundred and sixty chains, to a heap of stones in the line of the manor of Courtlandt, at the southwest corner of lot number six; then west, along the line of the manor of Courtland, three hundred and forty chains, to the beginning, containing about thirty-one thousand two hundred acres; lot number nine, beginning at a hemlock tree, standing on the south side of the east branch of Croton river, and a heap of stones on the north side, which is also the southeast corner of lot number six, in the line of the manor Courtlandt; from thence running north ten degrees east three hundred and thirty-three chains, to a heap of stones and a walnut tree, marked P R, 1753, on the south side of the hill near an old meeting house in the line of lot number six, being the southwest corner of lot number eight; then east along the line of lot number eight, three hundred and thirty-seven chains, to a chesnut bush, marked P R, 1753, standing in the oblong line, on the west side of a rocky hill, which is the southeast corner of lot number eight, then southerly, as the oblong line runs, three hundred and thirty-three chains, to the northeast corner of the manor of Courtlandt, in Peach pond; then west, along the said manor of Courtland, three hundred and thirty-six chains, to the beginning, containing about eleven thousand two hundred and twenty acres, and the one third part of the meadow land, lying in lot number two, beginning five chains from the upland upon Danford's creek, and running to Crooked creek, five chains from the uplands; then down Crooked creek to the meadow belonging to lot number one; then northwest to Matler's rock; then along the upland, the north side of little island in the meadow, to the mouth of Danford's creek; then up the said creek to the beginning, containing about eighty-two acres; and also all and singular other the lands, tenements, hereditaments, and real estate, whatsoever and wheresoever, of her,

801.

the said Mary Philipse, and also all the estate, right, title, interest, possession, claim, and demand whatsoever, of her, the said Mary Philipse, of, in, and to all and singular the said lots or parcels of land above mentioned and described, and all and singular her other lands, tenements, hereditaments, and real estate whatsoever, or any part or parcel thereof, with the appurtenances, to have and to hold all and singular the said several lots, of land herein before mentioned, or intended to be hereby released, and all and singular other the lands, tenements, hereditaments, and real estate whatsoever, of her, the said Mary Philipse, with their and every of their members and appurtenances, unto the said Johannah Philipse and Beverly Robinson, and their heirs, to and for the several uses, interests, and purposes hereinafter declared, expressed, limited, and appointed, and to and for no other use, intent, and purpose whatsoever, that is to say, to and for the use and behoof of them, the said Johannah Philipse and Beverly Robinson, and their heirs, until the solemnization of the said intended marriage, and from and immediately after the solemnization of the said intended marriage, then to the use and behoof of the said Mary Philipse and Roger Morris, and the survivor of them, for and during the term of their natural lives, without impeachment of waste, and from and after the determination of that estate, then to the use and behoof of such child or children as shall or may be procreated between them, and to his, her, or their heirs and assigns for ever; but in case the said Roger Morris and Mary Philipse shall have no child or children begotten between them, or that such child or children shall happen to die during the lifetime of the said Roger and Mary, and the said Mary should survive the said Roger, without issue, then to the use and behoof of her, the said Mary Philipse, and her heirs and assigns for ever; and in case the said Roger Morris should survive the said Mary Philipse, without any issue by her, or that such issue is then dead without leaving issue, then, after the decease of the said Roger Morris, to the only use and behoof of such person or persons, and in such manner and form as she, the said Mary Philipse, shall, at any time during the said intended marriage, devise the same by her last will and testamant, which last will and testament, for that purpose, it is hereby agreed by all the parties to these presents, that it shall be lawful for her, at any time during the said marriage, to make, publish, and declare, the said marriage, or any thing herein contained to the contrary thereof in any wise notwithstanding. provided, nevertheless, and it is the true intent and meaning of the parties to these presents, that it shall and may be lawful to and for the said Roger Morris and Mary Philipse, jointly, and at any time or times during the said marriage, to sell and dispose of any part of the said several lots or parcels of land, or of any other her lands, tenements hereditaments, and real estate whatsoever, to the value of three thousand pounds, current money of the province of New York; and in case the said sum of three thousand pounds be not raised by such sale or sales during their joint lives, and they have issue between them, that then it shall be lawful for the survivor of them to raise the said sum, by the sale of any part of the said lands, or such deficiency thereof as shall not then have been already raised thereout, so as to make up the said full sum of three thousand pounds, any thing herein before contained, to the contrary thereof in any wise notwithstanding; and the said Roger Morris, for and in consideration of the premises, and the sum of five shillings, current money of the province of New York, to him in hand paid by the said Johannah Philipse and Beverly Robinson, doth hereby, for himself, his heirs, execu-

tors, and administrators, covenant, promise, grant, and agree to and with the said Johannah Philipse and Beverly Robinson, their and each of their heirs, executors, and administrators, in manner and form following, that is to say, that in case the said Mary Philipse shall survive him, the said Roger Morris, that then and in such case, immediately after his death, all and singular the moneys and personal estate whatsoever whereof he shall die possessed, shall be accounted the proper money and estate of the said Mary Philipse during her natural life, and after her decease, in case there be no issue begotten between the said Roger Morris and Mary Philipse, then living, that then the said moneys and personal estate shall and may be had and taken by the executors and administrators of the said Roger Morris, these presents, or any thing herein contained, to the contrary thereof, in any wise notwithstanding; but if such child or children shall survive the said Roger Morris and Mary Philipse, then the said moneys and estate to be divided among them, in such shares and proportions as he, the said Roger Morris shall think fit, at any time hereafter, by his last will and testament, or otherwise, to order and direct. In witness whereof, all the parties first above named have, to three parts hereof, all of the same tenor and date, set their hands and seals, the date and year first above written.

MARY PHILIPSE, [L. S.]
ROGER MORRIS, [L. S.]
JOHANNA PHILLIPSE, [L. S.]
BEV. ROBINSON. [L. S.]

Sealed and delivered, the words (then south ten degrees west, along the line of lot number six,) being first interlined between the sixteenth and seventeen lines of the first sheet, and the word (thirteenth) wrote on a razure, in the presence of

WIL. LIVINSTON,
SARAH WILLIAMS.

SCHEDULE D.—*Abstract of release.*

This indenture, made the nineteenth day of December, in the fiftieth year of the reign of our sovereign lord, George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, defender of the faith, and in the year of our Lord one thousand eight hundred and nine, between Thomas Cooper Hincks, of Somerset street, Portman square, in the parish of St. Mary-la-bone, and county of Middlesex, Esquire, and Johanna his wife, Maria Morris, of the city York, spinster, and Henry Gage Morris, of Somerset street, aforesaid, Esquire, a commander in his majesty's royal navy, which said Johanna Hincks, Maria Morris, and Henry Gage Morris, are the three surviving children of Mary Morris, now of the said city of York, but formerly of New York, in America, by Roger Morris, her husband deceased, of the one part, and John Jacob Astor, of the city of New York, in America, merchant, of the other part. Whereas, under and by virtue of letters patent of his majesty, King William the Third, under the great seal of the province of New York, bearing date on or about the seventeenth day of June, in the year one thousand six hundred and ninety-seven, all that tract of land in Dutchess county, situate, &c., (describing the said lands as the same are described in the said patent,) "was granted to Adolph Philipse, Esquire, his heirs and assigns for ever, who shortly after the granting of the said letters patent, departed this life intestate, leaving

862.

Frederick Philipse, Esquire, his nephew and heir at law." The said deed then recites the last will and testament of the said Frederick Philipse, devising the estate to Philip, Susannah, Margaret, and Mary, the death of Margaret Philipse, one of the devisees, the common recovery suffered to dock the entail, the partition deed by which the said Mary Philipse (afterwards Mary Morris) became seized in fee in severalty of lots number three, five, and nine, and one third of the meadow land in lot number two, describing those lots as they are described in the said partition deed. The said deed then recites as follows, "And whereas, by indenture of lease and release, bearing date, respectively, on or about the twelfth and thirteenth days of January, in the year one thousand seven hundred and fifty-eight, and made or expressed to be made between," &c.; and then reciting the release given in evidence in this suit.

The deed to said Astor then recites a deed, bearing date the fourteenth day of April, in the year of our Lord one thousand seven hundred and sixty-one, duly acknowledged between the said Philip Philipse and Beverly Robinson of the one part, and the said Roger Morris of the other part, which said last mentioned deed is described in the deed to said Astor as reciting the aforesaid partition deed of release, the application for, and the granting of the aforesaid patent, concerning the Connecticut line, and also reciting the said patent, and the grounds upon which it was granted, as the same are set forth in the said patent. And the deed to said Astor, in further describing the recitals and other things in the said deed to the said Roger Morris, proceeds as follows: "And reciting that a part of the lands by the last recited letters patent granted, was included within the bounds and limits of lot number nine, before described. It is by the now reciting indenture of the fourteenth day of April, one thousand seven hundred and sixty-one, witnessed, that in consideration of mutual grants and releases, from the said Roger Morris to the said Philip Philipse and Beverly Robinson, and of ten shillings, the said Philip Philipse and Beverly Robinson, did grant, bargain sell, alien, convey, release, and confirm, unto the said Roger Morris, his heirs and assigns, all such part, of the said lands, by the said in part recited letters patent, of the 27th day of March, granted, as are included and comprehended within the boundaries and limits of the said lot number nine, as herein and therein before described, with the appurtenances, (except all mines and minerals whatsoever,) to hold the same unto the said Roger Morris, his heirs and assigns forever." And the deed to said Astor then recites the act of the Legislature of the State of New York, by which the said Roger Morris and Mary his wife, and the said Beverly Robinson and Susannah his wife, were severally attainted, and their estates forfeited to the people of the said State. Then recites the death of the said Roger Morris, in the year 1794, leaving the said Mary Morris, his widow him surviving, who was then still living; then recites the children of the said Roger Morris and Mary his wife, and that the grantors in the said deed were then entitled to the said lands. Then recites that the interest of the said children were preserved to them by the fifth article of the definitive treaty of peace between Great Britain and the United States of America, bearing date on or about the third day of September, in the year one thousand seven hundred and eighty-three, by which it was declared, &c. And then the said deed to the said Astor proceeds as follows: "And whereas, all the lands and hereditaments mentioned and included in the said recited letters patent, were not divided between the said Philip Philipse, Mary Morris, and Susannah

Robinson, and whereas, the said John Jacob Astor hath contracted and agreed with the said Thomas Cowper Hincks and Johannah Hincks his wife, Maria Morris and Henry Gage Morris, for the absolute purchase of all the estate, right, title, and interest of them, the said Thomas Cowper Hincks and Johannah his wife, Maria Morris and Henry Gage Morris, of, in, to, or out of the said lands and hereditaments herein before mentioned, and comprised in the said herein before in part recited indentures, of the seventh day of February, one thousand seven hundred and fifty-four, and the thirteenth day of January, one thousand seven hundred and fifty-eight, and all other their lands and hereditaments, in the Dutchess county aforesaid, subject to the interest of the said State of New York, or their grantees therein, for the life of the said Mary Morris, and other interest or claims, conditions or consequences, to which the same or any part thereof, may, can, or shall be legally subject, by reason or means of the said herein before mentioned act of the Legislature of New York, at or for the price or sum of twenty thousand pounds. Now this indenture witnesseth that, in consideration of the said sum of twenty thousand pounds, of lawful money, current in Great Britain, to the said Thomas Cowper Hincks and Johannah his wife, Maria Morris and Henry Gage Morris, well and truly paid, by the said John Jacob Astor, immediately before the execution of these presents, in equal shares and proportions, the receipt of which said sum of twenty thousand pounds, they, the said Thomas Cowper Hincks and Johannah his wife, Maria Morris and Henry Gage Morris, do hereby respectively acknowledge, and thereof, and of and from the same, and every part thereof, do, and each and every of them, doth acquit, release, and discharge the said John Jacob Astor, his heirs, executors, administrators, and assigns, and every of them forever. They the said Thomas Cowper Hincks, and Johannah his wife, Maria Morris and Henry Gage Morris, according to their several and respective shares, estates, rights, and interests, but not further or otherwise, have, and each and every of them hath granted, bargained, sold, aliened, released and confirmed, and by these presents do, and each and every of them doth grant, bargain, sell, alien, release, and confirm unto the said John Jacob Astor, his heirs and assigns, in the actual possession of the said John Jacob Astor, now being by virtue of a bargain and sale thereof made to him by the said Thomas Cowper Hincks and Johanna his wife, Maria Morris and Henry Gage Morris, in consideration of five shillings, paid to each of them by the said John Jacob Astor, by indenture, bearing date the day next before the day of the date of these presents, for one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession, all and singular the lands, and hereditaments, herein before particularly mentioned and described, and by the said herein before in part recited indenture, of the seventh day of February, one thousand seven hundred and fifty-four, allotted to the said Mary Morris, her heirs and assigns, and also all and singular other the lands and hereditaments, comprised in the said herein before in part recited indenture, of the thirteenth day of January, one thousand seven hundred and fifty-eight, and all other their lands and hereditaments, in Dutchess county aforesaid, with their and every of their rights, members, and appurtenances, subject nevertheless to the estate vested in the said government of New York, or their grantees, for the life of the said Mary Morris, and all other interests and claims, conditions or consequences, to which the same or any part thereof, may, can, or shall be legally subject by reason or means of the said act of the Legislature of New York as aforesaid, and all houses,

cottages, outhouses, edifices, buildings, closes of land, meadow and pasture, woods, underwoods, and the ground and soil thereof, hedges, ditches, fences, mounds, ways, paths, passages, waters, land covered with water, water courses, liberties, priviliges, easements, profits, commodities, advantages, emoluments, and appurtenances whatsoever to the said land and hereditaments, hereby released or intended so to be, or any of them respectively belonging or in any wise appertaining, or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or member of the same, or any of them respectively, and the reversion or reversions, remainder and remainders, yearly, and other rents, issues, and profits thereof, and of every part thereof, and all the estate, right, title, interest, use, trust, inheritance, term, and terms, for years and for life or lives, property, possession, benefit, and equity of redemption, claim and demand whatsoever, at law and in equity, of them, the said Thomas Cowper Hincks and Johannah his wife, Maria Morris and Henry Gage Morris, and each and every of them respectively, of, in, to, and out of the same lands and hereditaments, and every part thereof, with the appurtenances, and all deeds, papers, writings, and muniments of title whatsoever, relating to, or in any wise concerning the same or any of them as are now in the custody, possession, or power of the said Thomas Cowper Hincks and Joannah his wife, Maria Morris and Henry Gage Morris, or any or either of them, and they, or any or either of them, can or may obtain without suit at law or in equity. To have and to hold the aforesaid tract of land, hereditaments, and all and singular other the premises herein before mentioned and described, and hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, subject nevertheless, as aforesaid, unto the said John Jacob Astor, his heirs and assigns, to the only proper use of the said John Jacob Astor, his heirs and assigns for ever, and to and for no other use, trust, intent, or purpose whatsoever; and the said Thomas Cowper Hincks doth hereby, for himself, his heirs, executors, and administrators, and only as to and concerning the estate and interest of him, the said Thomas Cowper Hincks, and of the said Joanna Hincks his wife, in the premises, and his and her acts, deeds, and defaults only; and the said Maria Morris doth hereby, for herself, her heirs, executors, and administrators, and only as to and concerning her estate and interest in the premises, and the acts, deeds, and defaults relating thereto; and the said Henry Gage Morris doth hereby, for himself, his heirs, executors, and administrators, and only as to and concerning the estate and interest of him the said Henry Gage Morris in the premises, and his acts and deeds and defaults, relating thereto, covenant, promise, and agree to and with John Jacob Astor, his heirs and assigns, that notwithstanding any act, deed, matter, or thing whatsoever, made, done, permitted, or suffered to the contrary, by them the said Thomas Cowper Hincks and Joanna his wife, Maria Morris and Henry Gage Morris, or any or either of them, they the said Thomas Cowper Hincks and Joanna his wife, Maria Morris and Henry Gage Morris, now have in themselves good right, full power, and lawful and absolute authority, by these presents, to grant, release, and confirm the said lands and hereditaments, hereby released and intended so to be, and every part and parcel of the same, with the appurtenances, unto and to the use of the said John Jacob Astor, his heirs and assigns forever, in manner aforesaid, and according to the true intent and meaning of these presents; and that free and clear, and freely and clearly and absoulutely ac-

quitted, exonerated, released, and discharged or otherwise, by them, the said Thomas Cowper Hincks and Joanna his wife, Maria Morris and Henry Gage Morris, their heirs, executors, or administrators, at their, some or one of their costs and charges, in all things well and sufficiently protected, defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, feoffments, mortgages, leases, bargains, sales, jointures, dower, rights, and title of dower, trusts, estates, titles, troubles, charges, liens, and incumbrances whatsoever, at any time or times heretofore, and to be at any time, and from time to time hereafter, had, made, done, committed, occasioned, permitted, or suffered by the said Thomas Cowper Hincks and Joanna his wife, Maria Morris and Henry Gage Morris, or any or either of them, or any person or persons whomsoever, rightfully claiming or to claim, by, from, through, under, or in trust for them, or any or either of them, or by his, their, or any or either of their acts, means, consent, default, privity, or procurement, (the rents reserved in respect of the said premises only excepted,) and moreover, that they, the said Thomas Cowper Hincks and Joanna his wife, Maria Morris and Henry Gage Morris, and their heirs, and all persons whosoever lawfully or equitably and rightfully claiming or to claim any estate, right, title, trust, charge, or interest at law or in equity, of, into, or out of or upon the said land and hereditaments, by, from, under, or in trust for them, (except as aforesaid,) shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges, in all things, of the said John Jacob Astor, his heirs or assigns, make, do acknowledge, levy, suffer, execute, and perfect, or cause or procure to be made, done, acknowledged, levied, suffered, executed, and perfected, all such further and other lawful and reasonable acts, deeds, devices, conveyances, and assurances, in the law whatsoever, for the further, better, more perfectly, absolutely, or satisfactorily granting, releasing, confirmed, or otherwise, assuring the said land and heridataments hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, (subject as aforesaid) unto and to the use of the said John Jacob Astor, his heirs and assigns forever, according to the true intent and meaning of these presents, as by the said John Jacob Astor, his heirs or assigns, or his or their counsel, learned in the law, and resident in England, shall be reasonably advised, devised, or required, and be tendered to be made, done, and executed, so as for the making or doing thereof, they shall not respectively be required to go or travel from their respective usual places of abode.

In witness whereof, the said parties to these present have hereunto set their hands and seals, the day and year first above written.

THOMAS COWPER HINCKS, [L. S.]
JOANNA HINCKS, [L. S.]
MARIA MORRIS, [L. S.]
HENRY GAGE MORRIS, [L. S.]

Signed, sealed, and delivered, by the within named Thomas Cowper Hincks and Joanna his wife, Maria Morris and Henry Gage Morris, in the presence of us, M. S. Parnther, London street, Richard Grose Burfoot, same place.

SCHEDULE F.

George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, to all to whom these presents shall come, greeting: Whereas, our loving subjects Philip Philipse, Beverly

864.

Robinson, and Roger Morris, by their humble petition presented to our trusty and well beloved Cadwallader Colden, Esq., our president of our council, and commander-in-chief of our province of New York, and the territories depending thereon in America, in council, on the twenty-sixth day of November, now last past, did set forth, that in the year of our Lord one thousand six hundred and eighty-three, a line of division was established between our province of New York and the colony of Connecticut, to be run parallel to, and at the equal distance of, twenty miles, in all its parts from Hudson's river; that before the actual running and ascertaining of the said line, a patent issued under the great seal of this province of New York, unto Adolph Philipse, Esquire, since deceased, bearing date the seventeenth day of June, one thousand six hundred and ninety-six, for all that certain tract or parcel of land, situate, lying, and being in the county of Dutchess, within our said province of New York, butted and bounded as follows, to wit: Beginning at a certain red cedar tree, marked, on the north side of the hill commonly called Anthony's Nose, which is likewise the north bounds of Colonel Stevanus Courtlandt's land, or his manor of Courtlandt; and from thence, bounded by Hudson's river, as the said river runs northerly until it comes to the creek, river, or run of water commonly called and known by the name of the Great Fishkill, to the northward and above the said Highlands, which is likewise the southward bounds of another tract of land belonging unto the said Colonel Stephanus Cortlandt and company, and so easterly along the said Colonel Cortlandt's line, and the south bounds of Colonel Henry Beckman, until it comes twenty miles, or unto the division or partition line between the colony of Connecticut and the said province, and easterly by the said division line, being bounded northwardly and southwardly by east and west lines unto the said division line between the said colony of Connecticut and the province aforesaid, the whole being bounded westward by the said Hudson's river, northward by the land of Col. Courtlandt and company, and the lands of Col. Henry Beckman, eastward by the partition line between the colony of Connecticut and the province of New York, and southerly by the manor of Cortlandt, to the land of the said Col. Courtlandt, including therein a certain island at the north side of the said Highlands, called Pollipell's island, as by the said letters patent, reference being thereunto had, might appear. That since the establishment of the said line, and the granting of the said patent, certain commissioners and surveyors were appointed, by authority of the respective governments of our province of New York and the colony of Connecticut, for running and marking out the said line, who, finding it impracticable to perform the same exactly, agreeable to the said establishment, did actually run and mark out a line as near as could be, parallel to the main course of Hudson's river, which line so actually run and marked out, was afterwards duly ratified and confirmed. That the said line, so run and marked out, not being in all its parts at the equal distance of twenty miles from Hudson's river, occasioned by the variation of its course from a straight line, the said line, as far as it extends along the rear of the said patent, does in some parts exceed, and in others fall short of that distance, notwithstanding which, the said Adolph Philipse, and those who hold under him, ever since the granting of the said letters patent, conceiving that the said line, so actually run and marked out, ought, for reasons of private and public utility, to be the rear line of the said patent, have always claimed, and still do claim, by virtue of the same, all the lands included within the north and south boundaries of the said patent, as far eastward from Hudson's river as to the said line of division so actually run

and marked out as aforesaid, although some disputes have lately arisen concerning the eastern bounds of the said patent, on pretence that the said tract thereby granted extends to the equal distance of twenty miles from Hudson's river, in a similar line to the windings and turnings of the said river, according to which construction a considerable tract of land would be excluded the same patent; that even admitting there was some color for such a construction of the eastern bounds of the said patent, since the actual running and marking out the said line, as would restrict the petitioners to the distance of twenty miles east of Hudson's river in every part of their rear line, which they conceive there is not; yet, as a considerable part of the lands granted by the said patent, within that distance, do lie to the eastward of the now line of division, and are held and enjoyed by others, our subjects not claiming under the said patent, upon a supposition that the same are not included in the said patent, since the running of the now line of division, the petitioners, in order to remove all doubts and controversies, were willing to surrender and release all their right and title to the same to us, in trust, for those our subjects holding the same, on condition of the petitioners obtaining grant and confirmation of all the lands that may lie between the distance of twenty miles from Hudson's river and the said now line of division; and the north and south bounds of the said patent extended to the said line, which will not only quiet the said inhabitants in their respective possessions, but also prevent any future controversy respecting the eastern bounds of the said patent. And that, as the petitioners were willing to pay the usual quit-rents for the said lands lying between the distance of twenty miles from Hudson's river and the now colony line, and the north and south bounds of the said patent extended to the said line, they humbly conceived themselves equitably entitled to such grant and confirmation, in preference to any other of our subjects who have no claim to the same; and therefore, the petitioners did humbly pray our letters patent, confirming unto them the said tract of land granted to the said Adolph Philipse, and granting and confirming unto them all other lands that may lie between the distance of twenty miles from Hudson's river and the said division line, and the north and south bounds of the said patent, extended to the said line; which petition having been then and there read and considered of, our said council did afterwards, on the same twenty-sixth day of Nov., humbly advise our said president to grant to the petitioners, their heirs, and assigns, our letters patent for the lands that might, on a survey, appear to lie between the distance of twenty miles from Hudson's river and the division line between the colony of New York and the colony of Connecticut, and between he north and south lines of the tract of land granted to the said Adolph Philipse, extended to the said division line, on condition that the petitioners surrender and release all their right and title to the lands lying to the eastward of the said colony line, to us, in trust, for our subjects holding the same. In pursuance whereof, and in obedience to the instructions of our late royal grandfather, George the Second, by the grace of God, late of Great Britain, France, and Ireland, king, defender of the faith, and so forth; for that purpose, the commissioners appointed by the said instructions for the setting out all lands to be granted within our said province of New York, have set out for the said Philip Philipse, Beverly Robinson, and Roger Morris, all those two certain tracts or parcels of land, situate, lying, and being in the county of Dutchess, at the distance of twenty miles from Hudson's river, and between the lands formerly granted to the said Adolph Philipse, Esq., deceased, and the equivalent lands surrendered by the colony of Connecticut to

863.

our said province of New York; the one of which tracts begins at a monument of a large heap of stones erected in the west bounds of the said equivalent lands, thirty-eight links north twenty-five degrees west, from a large rock having the letters H B P P and B R marked thereon, (which said monument or heap of stones was erected in the month of April, which was in the year of our Lord one thousand seven hundred and fifty-four, by the proprietors of the lands formerly granted to Col. Henry Beekman, and of the aforesaid lands formerly granted to Adolph Philipse for a corner and division between the said patents,) and runs from the said monument or heap of stones along the south bounds of the said Henry Beekman's land, west ninety chains, then south fifteen degrees west three hundred and sixty chains, then south twenty-four degrees east one hundred and sixty chains, then south fourteen degrees east fifty-nine chains, to the said west bounds of the said equivalent lands, then along the said west bounds five hundred and sixty chains, to the place where this tract began, containing four thousand five hundred and four acres of land, and the usual allowance for highways. And the other of the said tracts begins at a stake standing in the north bounds of the manor of Cortlandt, and on the west side of a pond of water commonly called and known by the name of Peach Pond; and runs from the said stake along the said north bounds of the said manor west thirty-seven chains; then north forty-two degrees east one hundred and thirty-six chains to the west bounds of the aforesaid equivalent lands; then along the said west bounds forty-eight chains to the aforesaid pond; and then along the west side of the aforesaid pond, to the place where this second tract began, containing two hundred and twenty-one acres of land, and the usual allowance for highways; the said two tracts containing, together, four thousand seven hundred and twenty-five acres of land, and the usual allowance for highways. And in setting out the said two tracts of land, the said commissioners have had regard to the profitable and unprofitable acres, and have taken care that the length of the said tracts, or either of them, do not extend along the banks of any river, otherwise than is conformable to the said royal instructions for that purpose, as by a certificate thereof, under their hands, bearing date the seventh day of February, now last past, and entered of record in our secretary's office, in our city of New York, may more fully appear. And whereas, by indenture bearing date the fifth day of this present month of March, the said Philip Philipse, Beverly Robinson and Susannah his wife, Roger Morris and Mary his wife, (which said Philip Philipse, and the said Susannah and Mary, are in the said indenture declared to be devisees of Frederick Philipse, Esquire, deceased, who is, by the same indenture, also declared to have been nephew and heir at law of the said Adolph Philipse, Esq., deceased; in pursuance of the petition aforesaid, and in performance of the condition aforesaid, and in order to remove all doubts and controversies in any way whatsoever touching the premises, did surrender and release to us all their right and title, of, in, and to all such part of the said tract of land before mentioned to have been granted to the said Adolph Philipse, Esq., now situate, lying, and being to the eastward of the said division line, and within the said distance of twenty miles from Hudson's river as aforesaid, with the reversion and the reversions, remainder and remainders thereof; to have and to hold the said lands so surrendered and released, or meant, mentioned, or intended to be so surrendered and released as aforesaid, to us, our heirs, and successors forever, in trust, for those of our subjects holding the same, as by the said indenture and the record thereof, both remaining in our secretary's office, for our said province of New York, may more fully appear. And we being also desirous to prevent

and remedy, as far as in us lies, all controversies and disputes whatsoever concerning the premises, are graciously pleased to grant unto them, the said Philip Philipse, Beverly Robinson, and Roger Morris, their heirs and assigns forever, in lieu and stead of the lands so surrendered to us, our heirs, and successors, in trust as aforesaid, all those, the said two certain tracts of land, so as aforesaid set out for them, the said Philip Philipse, Beverly Robinson, and Roger Morris, according to the royal instructions aforesaid.

Therefore, know ye that, of our especial grace, certain knowledge, and mere motion, we have given, granted, ratified, and confirmed, and by these presents do, for us, our heirs, and successors, give, grant, ratify, and confirm unto them, the said Philip Philipse, Beverly Robinson, and Roger Morris, their heirs and assigns forever, all those, the aforesaid two several tracts or parcels of land set out as aforesaid, for them, the said Philip Philipse, Beverly Robinson, and Roger Morris, and abutted, bounded, and described in manner as above mentioned, together with all and singular the tenements, hereditaments, emoluments, and appurtenances thereunto belonging or appertaining, and also all our estate, right, title, interest, possession, claim, and demand whatsoever, of, in, and to the same lands and premises, and every part and parcel thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, except and always reserved out of this, our present grant, unto us, our heirs, and successors forever, all mines of gold and silver, and also all white or other sort of pine trees, fit for masts, of the growth of twenty-four inches diameter and upwards, at twelve inches from the earth, for masts for the royal navy, of us, our heirs, and successors, to have and to hold one full and equal third part (the whole into three equal parts to be divided) of and in all and singular the said two several tracts or parcels of land, tenements, hereditaments, and premises, by these presents granted, ratified, and confirmed, and every part and parcel thereof, with their, and every of their appurtenances (except as is herein before excepted) unto the said Philip Philipse, his heirs and assigns, to the only proper use and behoof of him, the said Philip Philipse, his heirs and assigns forever; and to have and to hold one other full and equal third part (the whole into three equal parts to be divided) of and in all and singular the said two several tracts or parcels of land, tenements, hereditaments, and premises, by these presents granted, ratified, and confirmed, and every part and parcel thereof, with their and every of their appurtenances (except as is herein before excepted) unto the said Beverly Robinson, his heirs, and assigns, to the only proper use and behoof of him, the said Beverly Robinson, his heirs, and assigns forever; and to have and to hold one other full and equal third part (the whole into three equal parts to be divided) of and in all and singular the said two several tracts or parcels of land, tenements, hereditaments, and premises, by these presents granted, ratified, and confirmed, and every part and parcel thereof, with their and every of their appurtenances (except as is hereing before excepted) unto the said Roger Morris, his heirs, and assigns, to the only proper use and behoof of him, the said Roger Morris, his heirs, and assigns forever, to be holden of us, our heirs, and successors, in free and common soccage, as of our manor of East Greenwich, in our county of Kent, within our kingdom of Great Britain. Yielding, rendering, and paying therefor, yearly, and every year forever, unto us, our heirs, and successors, at our custom-house, in our city of New York, unto our or their collector or receiver-general then for the time being, on the feast of the annunciation of

866.

the blessed virgin Mary, commonly called lady day, the yearly rent of two shillings and six pence sterling for each and every hundred acres of the above granted lands, and so in proportion for any lesser quantity thereof, saving and except for such part of the said lands allowed for highways as above-mentioned, in lieu and stead of all other rents, services, dues, duties, and demands whatsoever, for the hereby granted lands and premises, or any part thereof, provided always, and upon condition nevertheless, that if the said Philip Philipse, Beverly Robinson, and Roger Morris, or one of them, their heirs or assigns, shall not, within three years next after the conclusion of the present war with France, plant, settle, and effectually cultivate at least three acres for every fifty acres of such of the hereby granted lands as are capable of cultivation; or if the said Philip Philipse, Beverly Robinson, and Roger Morris, or any of them, their, or any of their heirs or assigns, or any other person or persons, by their, or any of their privity, consent, or procurement, shall fell or cut down, or otherwise destroy any of the pine trees by these presents reserved to us, our heirs, and successors, or hereby intended so to be without the royal license of us, our heirs or successors, for so doing, first had and obtained, that then, and in either of those cases, this, our present grant, and every thing therein contained, shall cease and be absolutely void, and the lands and premises hereby granted, shall revert to and vest in us, our heirs, and successors, as if this our present grant had never been made, any thing herein before contained to the contrary in any wise notwithstanding: Provided further, and upon condition nevertheless, and we do hereby for us, our heirs, and successors, direct and appoint that this, our present grant, shall be registered and entered of record within six months from the date thereof, in our secretary's office, in our city of New York, in our said province, in one of the books of patents there remaining, and that a docket thereof shall be also entered in our auditor's office there, for our said province, and that in default thereof, this, our present grant, shall be void and of none effect, any thing before in these presents contained to the contrary thereof in any wise notwithstanding; and we do moreover, of our special grace, certain knowledge, and mere motion, consent and agree that this, our present grant, and the docket thereof being registered, recorded, and entered as before directed and appointed, shall be good and effectual in the law, to all intents, constructions, and purposes whatsoever against us, our heirs and successors, notwithstanding any misreciting, misbounding, misnaming, or other imperfection or omission of, in, or any wise concerning the above granted, or hereby mentioned, or intended to be granted lands, tenements, hereditaments, and premises, or any part thereof.

In testimony whereof, we have caused these, our letters, to be made patent, and the great seal of our said province to be hereunto affixed. Witness our trusty and well beloved Cadwallader D. Colden, Esq., our president of our council, and commander-in-chief of our province of New York, and the territories depending thereon in America, at our fort in our city of New York, the twenty-seventh day of March, in the year of our Lord one thousand seven hundred and sixty-one, and of our reign the first.

SCHEDULE G.

This indenture, made the eighteenth day of January, in the year of our Lord one thousand seven hundred and fifty-eight, between Beverly Robinson and Susannah his wife, Philip Philipse, and Mary Philipse, of the city of New York, of the first part, and Henry Beekman, of the city of New York, gentleman, Catharine Pawling, of Dutchess county, widow, and

Robert G. Livingston, of the city of New York, merchant, of the second part: Whereas, the parties of the first and second parts, by indenture, under their hands and seals, bearing date the fifteenth day of January, one thousand seven hundred and fifty-four, did mutually agree for the ending and settling all disputes which have subsisted between them, of and concerning certain lands in the county of Dutchess, which lands the parties of the first part have contended lay within the bounds of a patent granted to Adolph Philipse, Esq., deceased, bearing date the seventeenth day of June, in the year of our Lord one thousand six hundred and ninety-seven, and the parties of the second part have contended lay within the bounds of a patent granted to Colonel Henry Beekman, deceased, bearing date the twenty-second day of April, in the said year of our Lord one thousand six hundred and ninety-seven, that the lands so in dispute between them should be divided in manner following, that is to say: that a line should be run from Mathawan, or the mouth of Fishkill, due east as the compass now points to the oblong, then northerly along the line of the oblong two hundred chains, and from thence a due west line as the compass now points to the rear of the patent granted to Francis Rombout and company, which said last line the parties thereby agreed should be the bound line between them. And whereas the said parties, by one certain indenture, bearing date the same fifteenth day of January, one thousand seven hundred and fifty-four, did also mutually agree, that for the establishment and fixing the place of the said bound line, that the place of the same might be known by each of them, that the said line should be run and marked by Samuel Willis, of Hempstead, on Long Island, in the manner in the same last mentioned indenture mentioned; and did further agree, that the said bound line, as run by the said Samuel Willis, should forever thereafter be the bound line between them, and that they would mutually release to each other to the said line, as the same should be run by the said Samuel Willis, as by the said last mentioned indenture may more fully appear. And whereas the said Samuel Willis, in pursuance of the covenants and agreements aforesaid, hath, in the presence of both of the said parties, run and marked the said bound line, due west from the oblong toward the rear of the patent to Rombout and company, in manner following, that is to say: Beginning upon the oblong line, at a large monument of stones set up in the presence of the parties, which bears north twenty-five degrees west thirty-eight links of a chain from a large rock, on which are cut the letters H. B. for Henry Beekman, B. R. for Beverly Robinson, and P. P. for Philip Philipse; a new house, erected by Daniel Chase, bears the same course the rock does from the said monument; and from thence due west as the compass now points towards the patent of Rombout and company; the said line runs about twelve feet south of William Hunt's spring or fountain, where Col. Henry Beekman made the letters H. B. for his name, on the rock out of which the water of the said spring runs; the said line also crosseth a pretty large pond in the mountains, little southward of the middle of the said pond, on the east shore of which pond a monument of stones is set up; the said line passes also about two chains south of one Baker's house, standing in a hollow, and so runs west to the rear of the lands of Rombout and company, as agreed between the said parties. Now this indenture witnesseth, that the said Beverly Robinson and Susannah his wife, Philip Philipse and Mary Philipse, in pursuance of the covenants and agreements aforesaid, have, and each of them hath, remised, released, and forever quit-claimed, and by these presents do, and each of them doth, remise, release, and forever quit-claim unto the said Henry Beekman, Catharine Pawling, and Robert G. Livings-

807.

ton, (the same in their actual possession now being,) and to their heirs and assigns forever, all the lands, tenements, hereditaments whatsoever, that were in controversy and dispute between them, which lie to the northward of, and adjoining to, the said west line, run and described as aforesaid by the said Samuel Willis; and also all the right, title, interest, property, possession, claim, and demand whatsoever, of them, the said Beverly Robinson and Susannah his wife, Philip Philipse and Mary Philipse, and each of them, of, in, or to the same, or any part or parts thereof; to have and to hold the same, and every part and parcel thereof, unto them, the said Henry Beekman, Catharine Pawling, and Robert G. Livingston, their heirs and assigns forever, to the only proper use, benefit, and behoof, of them, the said Henry Beekman, Catharine Pawling, and Robert G. Livingston, their heirs and assigns forever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

BEVERLY ROBINSON, [L. S.]
PHILIP PHILIPSE, [L. S.]
MARY PHILIPSE, [L. S.]
SUSANNAH ROBINSON. [L. S.]

Sealed and delivered, the words (agree) (marked) (may) (and agreements) (of) being first interlined before execution, in the presence of us; also, that in the fourth line between the words (January) and (did,) was interlined (one thousand seven hundred and fifty-four,) and in the twelfth line between the words (January) and (did,) was also interlined (one thousand seven hundred and fifty-four,) before execution.

WILLIAM SCOTT,
HENRY JACOBS.

SCHEDULE II.

This indenture, made the eighteenth day of February, in the year of our Lord one thousand seven hundred and seventy-one, and in the eleventh year of the reign of our sovereign lord, George the Third, of Great Britain, &c., king, &c., between Beverly Robinson, of the county of Dutchess, Esquire, the honorable Roger Morris, Esquire, John Ogilvie, doctor in divinity, Adolph Philipse, gentleman, and Nathaniel Marston, merchant, as guardian to and in right of Frederick Philipse and Nanthaniel Philipse, sons of Philip Philipse, deceased, all of the city of New York, which same Beverly Robinson, Roger Morris, John Ogilvie, Adolph Philipse, Frederick Philipse, and Nathaniel Philipse, are owners and proprietors of a certain tract of land situate in the said county of Dutchess, granted by letters patent, dated the seventeenth day of June, one thousand six hundred and ninety-seven, to Adolph Philipse, deceased, of the one part, and Samuel Verplank, of the said city of New York, merchant, owner and proprietor of one equal third part of the right and share of Jacobus Kip, of and in a certain tract of land situate in the county of Dutchess, the same tract being granted by letters patent, dated the twentieth day of October, one thousand six hundred and eighty-five, to the said Jacobus Kip, Francis Rombout, and Stephanus Van Cortlandt, of the other part. Whereas a certain award, bearing date the twenty-sixth day of January last, was lately made and published by William Nicoll, of Islip, in the county of Suffolk, Esquire, and Thomas Kicks, of Queens county, Esquire, two of the arbitrators elected and chosen

between the parties to these presents, to settle and determine, fix upon, and ascertain the line of division between the said parties, as to the north bounds of the lands claimed, owned, and held by the aforesaid parties of the first part, in manner aforesaid, under the said letters patent to the aforesaid Adolph Philipse; and as to the south bounds of the lands claimed, owned, and held under the aforesaid Jacobus Kip, by the aforesaid Samuel Verplank, and in and by the same award it is awarded, ordered, and adjudged, that the boundary or division line between the said tract of land, so as aforesaid granted to the said Jacobus Kip, Francis Rombout, and Stephanus Van Cortlandt, and the said tract of land, so as aforesaid granted to the said Adolph Philipse, shall begin at the northern extent of the bushes or shrubs upon Plumb point, being the south side of the mouth of the Fishkill or creek, and shall run from thence east six degrees north, as the compass now points, sixteen miles; and that the said line shall forever thereafter be, remain, and continue, the boundary or division line between the said two tracts of land, so far as it concerns the said Samuel Verplank; and further, that the said Beverly Robinson, Roger Morris, John Ogilvie, Adolph Philipse, and Nathaniel Marston, in right of and as guardian to the said Frederick Philipse and Nathaniel Philipse, shall, in due form of law, within six weeks after the date of the said award, by deed in writing, but without any covenants whatsoever therein, grant, release, and acquit, unto the said Samuel Verplank, and to his heirs and assigns forever, all their, and each of their estate, right, title, interest, claim, and demand, of, in, and to all and singular, the lands, tenements, and hereditaments, with their and every of their appurtenances, situate, lying, and being to the northward of the said boundary and division line thereby awarded, settled, and established as aforesaid, so far as it concerns the said Samuel Verplank, under the said Jacobus Kip, as in and by the same award, relation thereunto being had, doth and may more fully and at large appear among other things therein contained.

Now therefore, this indenture witnesseth, that the said parties of the first part, as well in pursuance of the said award as of the sum of ten shillings, lawful money of New York, to them in hand paid by the said Samuel Verplanck, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath, remised, released, quit-claimed, and confirmed, and by these presents do, and each of them doth, fully, freely, and absolutely remise, release, quit-claim, and confirm unto the said Samuel Verplank, his heirs and assigns forever, all their and each of their estate, right, title, interest, claim, and demand, of, in, and to all and singular the lands, tenements, and hereditaments, with their and every of their appurtenances, claimed as the share of the said Samuel Verplank, under the said Jacob Kip, situate, lying, and being to the northward of the said boundary and division line so awarded, ascertained, and established, by the said award herein, in part recited as aforesaid, that is to say, to the northward of a line beginning at the northern extent of the bushes or shrubs upon Plumb point, being the south side of the mouth of the Fishkill or creek, and running from thence east six degrees north, as the compass at the time of the award aforesaid pointed, sixteen miles. To have and to hold the same premises hereby remised and released, with their and every of their hereditaments and appurtenances, unto the said Samuel Verplank, his heirs and assigns, to the sole and only proper use and behoof of the said Samuel Verplank, his heirs and assigns forever.

868.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first within written.

BEVERLY ROBINSON, [L. S.]
ROGER MORRIS, [L. S.]
JOHN OGILVIE, [L. S.]
ADOLPH PHILIPSE, [L. S.]
NATHANIEL MARSTON. [L. S.]

Sealed and delivered, the word "Suffolk," on the 3d line of second page, the words "Samuel Verplank," on said line of third page, being wrote on razures; the words "so far as it concerns the said Samuel Verplank, under the said Jacobus Kip," between the fifteenth and sixteenth lines of third page; and the words "claimed as the share of the said Samuel Verplank, under the said Jacobus Kip," between the eighth and ninth lines of the fourth page, being interlined; the words "said Samuel Verplank, his," on the 5th line of said page, wrote on razures, in the presence of

LLOYD DAUBURY,
THOMAS MARSTON.

UNITED STATES OF AMERICA, *southern district of New York*, ss.

I, Frederic J. Betts, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate, are true copies of the record and procedings in the annexed writ of error mentioned, now on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eight day of June, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the said United States the fifty-fifth.

FRED. J. BETTS, *Clerk.* [SEAL.]